

Tina Padovano

From: Amy Sugden <[REDACTED]>
Sent: Thursday, July 30, 2020 7:41 PM
To: Tina Padovano
Cc: Sigal Chattah
Subject: Written Public Comment - Nevada Tax Commission Meeting (July 31, 2020)
Attachments: TRO App (FINAL) 7.28.20.pdf; Rply TRO (FINAL) .pdf; NOE of FFCOL Granting Preliminary Injunction Issued on 8.23.19.pdf

Importance: High

Dear Tax Commission,

As existing Plaintiffs in the case entitled "In re Department of Taxation", Case No. A-19-787004-B, pending in the Eighth Judicial District Court, THC Nevada, LLC and Herbal Choice, Inc. hereby submit their public opposition to the proposed recommended settlement as submitted to the Tax Commission.

In particular, THC Nevada and Herbal Choice submit that there are numerous issues of grave concern that should prevent the Tax Commission from even attempting to consider sanctioning this proposed settlement. These are set forth as follows:

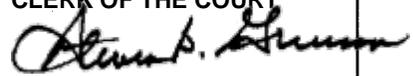
- (1) The Partial Settlement Agreement has not been approved by the Court; thus any purported approval by the Tax Commission is premature. The district court must approve the settling Plaintiffs request to dismiss their Complaints against the Department of Taxation and other Intervenor/Defendants pursuant to NRC 41(a)(2) – which requires that the Court consider issue an order of dismissal on terms **that the Court considers proper**. THC NV and Herbal Choice submit that as written, the Partial Settlement Agreement, which is the basis for the stipulation of dismissal, will not garner approval by the Court.
- (2) In particular, the Court cannot sanction a settlement that supports ethical violations/breach of professional conduct by counsel of the Settling Plaintiffs (as discussed in more detail in the attached Briefing submitted before the Court)
- (3) The Court cannot sanction a settlement that condones dubious behavior by the parties to the Settlement, including the Department of Taxation, to work around the Court ordered injunction enjoining those certain license that were issued in contravention of Nevada law.
See Paragraph 46 of the August 23, 2019 Findings of Fact and Conclusions of Law Granting Preliminary Injunction (enclosed hereto).
- (4) Finally, it is unclear how the Tax Commission can approve such a settlement that binds the Cannabis Compliance Board ("CCB") repeatedly, when the CCB is not a signatory to the Agreement. It is our understanding that the CCB is designed and intended to be an **independent agency** that the Governor created for "the express purpose of reforming and strengthening Nevada's cannabis industry". But the way in which the CCB is referenced – 38 times in the Settlement Agreement – evidences otherwise. Moreover, the manner in which this attempted settlement agreement has been negotiated and the significant terms that bind the CCB give the public concern that the CCB is NOT in fact independent as intended by the Governor.

Accordingly, we respectfully request that the Tax Commission refuse to consider this matter and in the event that they decide to, specify to the public the authority it relies on to determine that the Department of Tax necessitates the Tax

Commission's approval and the effect thereof. As under the law, we assert the Department of Tax has no say in this matter as of July 1, 2020.

Respectfully,

THC Nevada, LLC & Herbal Choice, Inc. (via counsel Amy L. Sugden & Sigal Chattah)



1 **NEO**
THEODORE PARKER, III, ESQ.
2 Nevada Bar No. 4716
MAHOGANY TURFLEY, ESQ.
3 Nevada Bar No. 13974
PARKER, NELSON & ASSOCIATES, CHTD.
4 2460 Professional Court, Suite 200
Las Vegas, Nevada 89128
5 Telephone: (702) 868-8000
Facsimile: (702) 868-8001
6 Email: tparker@pnlaw.net

7 *Attorneys for Plaintiff,*
8 *Nevada Wellness Center, LLC*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 ETW MANAGEMENT GROUP LLC, a
12 Nevada limited liability company; GLOBAL
HARMONY LLC, a Nevada limited liability
13 company; GREEN LEAF FARMS
HOLDINGS LLC, a Nevada limited liability
14 company; GREEN THERAPEUTICS LLC, a
Nevada limited liability company; HERBAL
15 CHOICE INC., a Nevada corporation; JUST
QUALITY, LLC, a Nevada limited liability
16 company; LIBRA WELLNESS CENTER,
LLC, a Nevada limited liability company;
17 ROMBOUGH REAL ESTATE INC. dba
MOTHER HERB, a Nevada corporation;
18 NEVCANN LLC, a Nevada limited liability
company; RED EARTH LLC, a Nevada
19 limited liability company; THC NEVADA
LLC, a Nevada limited liability company;
20 ZION GARDENS LLC, a Nevada limited
liability company; and MMOF VEGAS
21 RETAIL, INC., a Nevada corporation,

22 Plaintiffs,

23 v.

24 STATE OF NEVADA, DEPARTMENT OF
TAXATION, a Nevada administrative
25 agency; DOES 1 through 20, inclusive; and
ROE CORPORATIONS 1 through 20,
26 inclusive,

27 Defendants.

CASE NO.: A-19-787004-B
DEPT NO.: XIII

Consolidated with:

Case No. A-18-785818-W
Case No. A-18-786357-W
Case No. A-19-786962-B
Case No. A-19-787035-C
Case No. A-19-787540-W
Case No. A-19-787726-C
Case No. A-19-801416-B

**NOTICE OF ENTRY OF FINDINGS OF
FACTS AND CONCLUSIONS OF LAW
GRANTING PRELIMINARY
INJUNCTION ISSUED ON AUGUST 23,
2019**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MM DEVELOPMENT COMPANY, INC., a Nevada corporation; LIVFREE WELLNESS LLC, dba The Dispensary, a Nevada limited liability company,

Plaintiffs,

v.

STATE OF NEVADA, DEPARTMENT OF TAXATION; and DOES 1 through 10; and ROE CORPORATIONS 1 through 10,

Defendants.

CASE NO.: A-18-785818-W
DEPT. NO.: VIII

COMPASSIONATE TEAM OF LAS VEGAS LLC, a Nevada Limited Liability Company,

Plaintiffs,

v.

STATE OF NEVADA, DEPARTMENT OF TAXATION; DOES 1 through 10; and ROE CORPORATIONS 1 through 10,

Defendants.

CASE NO.: A-18-786357-W
DEPT. NO.: XIV

GREENMART OF NEVADA NLV LLC, a Nevada limited liability company,

Intervenor Defendant.

CASE NO.: A-19-786962-B
DEPT. NO.: XI

SERENITY WELLNESS CENTER, LLC, a Nevada limited liability company, TGIG, LLC, a Nevada limited liability company, NULEAF INCLINE DISPENSARY, LLC, a Nevada limited liability company, NEVADA HOLISTIC MEDICINE, LLC, a Nevada limited liability company, TRYKE COMPANIES SO NV, LLC a Nevada limited liability company, TRYKE COMPANIES RENO, LLC, a Nevada limited liability company, PARADISE WELLNESS CENTER, LLC, a Nevada limited liability company, GBS NEVADA PARTNERS, LLC, a Nevada limited liability company, FIDELIS HOLDINGS, LLC, a Nevada limited liability company, GRAVITAS NEVADA, LLC, a Nevada limited liability company, NEVADA PURE, LLC, a Nevada limited liability company, MEDIFARM, LLC, a Nevada

1 limited liability company; DOE PLAINTIFFS
2 I through X; and ROE ENTITIES I through
3 X,

4
5 Plaintiffs,

6 v.

7 THE STATE OF NEVADA, DEPARTMENT
8 OF TAXATION,

9 Defendants.

10 D.H. FLAMINGO, INC., d/b/a THE
11 APOTHECARY SHOPPE, a Nevada
12 corporation; CLARK NATURAL
13 MEDICINAL SOLUTIONS LLC, d/b/a
14 NuVEDA, a Nevada limited liability
15 company; NYE NATURAL MEDICINAL
16 SOLUTIONS LLC, d/b/a NuVEDA, a
17 Nevada limited liability company; CLARK
18 NMSD LLC, d/b/a NuVEDA, a Nevada
19 limited liability company; INYO FINE
20 CANNABIS DISPENSARY L.L.C., d/b/a
21 INYO FINE CANNABIS DISPENSARY, a
22 Nevada limited liability company; and
23 SURTERRA HOLDINGS, INC., a Delaware
24 corporation,

25 Plaintiffs/Petitioners,

26 v.

27 STATE EX REL. DEPARTMENT OF
28 TAXATION; STATE EX REL. NEVADA
TAX COMMISSION; et al.

Defendants/Respondents.

NEVADA WELLNESS CENTER, LLC, a
Nevada Limited Liability Company,

Plaintiff,

v.

STATE OF NEVADA, DEPARTMENT OF
TAXATION; and DOES I through X,
inclusive; and ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO.: A-19-787035-C
DEPT NO.: VI

CASE NO.: A-19-787540-W
DEPT. NO.: XVIII

1 GREENMART OF NEVADA NLV LLC, a
2 Nevada limited liability company,

3 Intervenor Defendant.

4 HIGH SIERRA HOLISTICS, LLC,

5 Plaintiff,

6 v.

7 STATE OF NEVADA, DEPARTMENT OF
8 TAXATION; DOES 1-10 and ROE
9 CORPORATIONS 1-10,

10 Defendants.

11 GREENMART OF NEVADA NLV LLC, a
12 Nevada limited liability company,

13 Applicant in Intervention.

14 QUALCAN, LLC, a Nevada limited
15 liability company;

16 Plaintiff,

17 v.

18 THE STATE OF NEVADA,
19 DEPARTMENT OF TAXATION; DOES
20 I through X; ROE BUSINESS ENTITIES
21 I through X;

22 Defendants.

CASE NO.: A-19-787726-C
DEPT. NO.: XIV

CASE NO.: A-19-801416-B
DEPT. NO.: XIII

23 **NOTICE OF ENTRY OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
24 **GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**

25 PLEASE TAKE NOTICE that an **FINDINGS OF FACTS AND CONCLUSIONS OF**
26 **LAW GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**, a true and

27 ///

28 ///

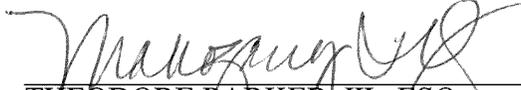
///

1 correct copy of which is attached hereto, was entered to the Court on the 23rd, day of August, 2019.

2 DATED this 12th, day of May, 2020.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARKER, NELSON & ASSOCIATES, CHTD.



THEODORE PARKER, III., ESQ.
Nevada Bar No. 4716
MAHOGANY TURFLEY, ESQ.
Nevada Bar No. 13974

PARKER, NELSON & ASSOCIATES, CHTD.
2460 Professional Court, Suite 200
Las Vegas, Nevada 89128
Telephone: (702) 868-8000
Facsimile: (702) 868-8001
Email: tparker@pnlaw.net
Attorneys for Plaintiff,
Nevada Wellness Center, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

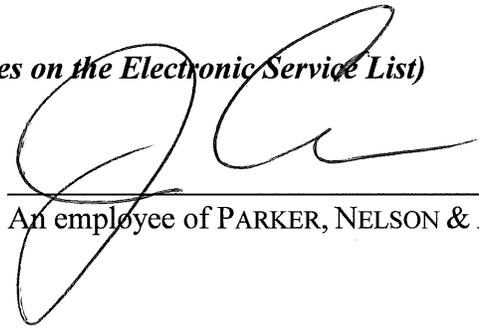
CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of the law office of PARKER, NELSON & ASSOCIATES, CHTD., and that on this 12th, day of May, 2020, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER FACTS AND CONCLUSIONS OF LAW GRANTING PRELIMINARY INJUNCTION ISSUED ON AUGUST 23, 2019**

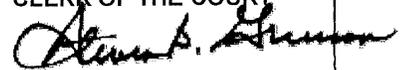
on the party(s) set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Las Vegas, NV, postage prepaid, following ordinary business practices.
- Facsimile transmission, pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, by faxing a true and correct copy of the same to each party addressed as follows:
- By E-mail: by electronic mail delivering the document(s) listed above to the e-mail address(es) set forth below on this date before 5:00 p.m.
- By EFC: by electronic filing with the Court delivering the document(s) listed above via E-file & E-serve (Odyssey) filing system.

(All Parties on the Electronic Service List)



An employee of PARKER, NELSON & ASSOCIATES, CHTD.



1 FFCL

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 SERENITY WELLNESS CENTER, LLC, a
7 Nevada limited liability company, TGIG, LLC,
8 a Nevada limited liability company, NULEAF
9 INCLINE DISPENSARY, LLC, a Nevada
10 limited liability company, NEVADA
11 HOLISTIC MEDICINE, LLC, a Nevada limited
12 liability company, TRYKE COMPANIES SO
13 NV, LLC, a Nevada limited liability company,
14 TRYKE COMPANIES RENO, LLC, a Nevada
15 limited liability company, PARADISE
16 WELLNESS CENTER, LLC, a Nevada limited
17 liability company, GBS NEVADA PARTNERS,
18 LLC, a Nevada limited liability company,
19 FIDELIS HOLDINGS, LLC, a Nevada limited
20 liability company, GRAVITAS NEVADA,
21 LLC, a Nevada limited liability company,
22 NEVADA PURE, LLC, a Nevada limited
23 liability company, MEDIFARM, LLC, a Nevada
24 limited liability company, DOE PLAINTIFFS I
25 through X; and ROE ENTITY PLAINTIFFS I
26 through X,

27 Plaintiff(s),

28 vs.

THE STATE OF NEVADA, DEPARTMENT
OF TAXATION,

Defendant(s).

and

NEVADA ORGANIC REMEDIES, LLC;
INTEGRAL ASSOCIATES LLC d/b/a
ESSENCE CANNABIS DISPENSARIES, a
Nevada limited liability company; ESSENCE
TROPICANA, LLC, a Nevada limited liability
company; ESSENCE HENDERSON, LLC, a
Nevada limited liability company; CPCM
HOLDINGS, LLC d/b/a THRIVE CANNABIS
MARKETPLACE, COMMERCE PARK
MEDICAL, LLC, a Nevada limited liability
company; and CHEYENNE MEDICAL, LLC, a
Nevada limited liability company; LONE
MOUNTAIN PARTNERS, LLC, a Nevada

Case No. A-19-786962-B
Dept. No. 11

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW GRANTING
PRELIMINARY INJUNCTION**

CLERK OF THE COURT

REC'D
AUG 29 2019

1 limited liability partnership; HELPING HANDS
2 WELLNESS CENTER, INC., a Nevada
3 corporation; GREENMART OF NEVADA
4 NLV LLC, a Nevada limited liability company;
5 and CLEAR RIVER, LLC,

Intervenors.

5 This matter having come before the Court for an evidentiary hearing on Plaintiffs' Motion for
6 Preliminary Injunction beginning on May 24, 2019, and occurring day to day thereafter until its
7 completion on August 16, 2019;¹ Dominic P. Gentile, Esq., Vincent Savarese III, Esq., Michael V.
8 Cristalli, Esq., and Ross J. Miller, Esq., of the law firm Gentile Cristalli Miller Armeni Savarese,
9 appeared on behalf of Serenity Wellness Center, LLC, TGIG, LLC, Nuleaf Incline Dispensary, LLC,
10 Nevada Holistic Medicine, LLC, Tryke Companies SO NV, LLC, Tryke Companies Reno, LLC,
11 Paradise Wellness Center, LLC, GBS Nevada Partners, LLC, Fidelis Holdings, LLC, Gravitas Nevada,
12 LLC, Nevada Pure, LLC, Medifarm, LLC (Case No. A786962-B) (the "Serenity Plaintiffs"); Adam K.
13 Bult, Esq. and Maximilien D. Fetaz, Esq., of the law firm Brownstein Hyatt Farber Schreck, LLP,
14 appeared on behalf of Plaintiffs ETW Management Group LLC, Global Harmony LLC, Green Leaf
15 Farms Holdings LLC, Green Therapeutics LLC, Herbal Choice INC., Just Quality, LLC, Libra
16 Wellness Center, LLC, Rombough Real Estate Inc. dba Mother Herb, NevCann LLC, Red Earth LLC,
17 THC Nevada LLC, Zion Gardens LLC, and MMOF Vegas Retail, Inc. (Case No. A787004-B) (the
18 "ETW Plaintiffs"); William S. Kemp, Esq. and Nathaniel R. Rulis, Esq., of the law firm Kemp, Jones
19 & Coulthard LLP, appeared on behalf of MM Development Company, Inc. and LivFree Wellness LLC
20 (Case No. A785818-W) (the "MM Plaintiffs"); Theodore Parker III, Esq., of the law firm Parker
21 Nelson & Associates, appeared on behalf of Nevada Wellness Center (Case No. A787540-W)
22 (collectively the "Plaintiffs"); Steven G. Shevorski, Esq., Ketan D. Bhirud, Esq., and Theresa M. Haar,
23 Esq., of the Office of the Nevada Attorney General, appeared on behalf of the State of Nevada,
24 Department of Taxation; David R. Koch, Esq., of the law firm Koch & Scow LLC, appeared on behalf

25 ¹ Although a preservation order was entered on December 13, 2018, in A785818, no discovery in any case was done
26 prior to the commencement of the evidentiary hearing, in part due to procedural issues and to statutory restrictions on
27 disclosure of certain information modified by SB 32 just a few days before the commencement of the hearing. As a result,
28 the hearing was much longer than anticipated by any of the participating counsel. In compliance with SB 32, the State
produced previously confidential information on May 21, 2019. These documents were reviewed for confidentiality by the
Defendants in Intervention and certain redactions were made prior to production consistent with the protective order entered
on May 24, 2019.

1 of Nevada Organic Remedies, LLC; Brigid M. Higgins, Esq. and Rusty Graf, Esq., of the law firm
2 Black & Lobello, appeared on behalf of Clear River, LLC; Eric D. Hone, Esq., of the law firm H1 Law
3 Group, appeared on behalf of Lone Mountain Partners, LLC; Alina M. Shell, Esq., of the law firm
4 McLetchie Law, appeared on behalf of GreenMart of Nevada NLV LLC; Jared Kahn, Esq., of the law
5 firm JK Legal & Consulting, LLC, appeared on behalf of Helping Hands Wellness Center, Inc.; and
6 Joseph A. Gutierrez, Esq., of the law firm Maier Gutierrez & Associates, and Philip M. Hymanson,
7 Esq., of the law firm Hymanson & Hymanson; Todd Bice, Esq. and Jordan T. Smith, Esq. of the law
8 firm Pisanelli Bice; and Dennis Prince, Esq. of the Prince Law Group appeared on behalf of Integral
9 Associates LLC d/b/a Essence Cannabis Dispensaries, Essence Tropicana, LLC, Essence Henderson,
10 LLC, CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Commerce Park Medical, LLC, and
11 Cheyenne Medical, LLC (the “Essence/Thrive Entities”). The Court, having read and considered the
12 pleadings filed by the parties; having reviewed the evidence admitted during the evidentiary hearing;
13 and having heard and carefully considered the testimony of the witnesses called to testify; having
14 considered the oral and written arguments of counsel, and with the intent of deciding the Motion for a
15 Preliminary Injunction,² makes the following preliminary findings of fact and conclusions of law:

16 ***PROCEDURAL POSTURE***

17 Plaintiffs are a group of unrelated commercial entities who applied for, but did not receive,
18 licenses to operate retail recreational marijuana establishments in various local jurisdictions throughout
19 the state. Defendant is Nevada’s Department of Taxation (“DoT”), which is the administrative agency
20 responsible for issuing the licenses. Some successful applicants for licensure intervened as Defendants.

21 The Serenity Plaintiffs filed a Motion for Preliminary Injunction on March 19, 2019, asking for
22 a preliminary injunction to:

- 23 a. Enjoin the denial of Plaintiffs applications;
24 b. Enjoin the enforcement of the licenses granted;
25 c. Enjoin the enforcement and implementation of NAC 453D;

26
27 ² The findings made in this Order are preliminary in nature based upon the limited evidence presented after very
28 limited discovery permitted on an expedited basis and may be modified based upon additional evidence presented to the
Court at the ultimate trial of the business court matters.

- 1 d. An order restoring the *status quo ante* prior to the DoT's adoption of NAC 453D;
2 and
3 e. Several orders compelling discovery.

4 This Court reviewed the Serenity Plaintiffs' Motion for Preliminary Injunction and at a hearing on
5 April 22, 2019, invited Plaintiffs in related cases, not assigned to Business Court, to participate in the
6 evidentiary hearing on the Motion for Preliminary Injunction being heard in Department 11 for the
7 purposes of hearing and deciding the Motions for Preliminary Injunction.³

8 **PRELIMINARY STATEMENT**

9 The Attorney General's Office was forced to deal with a significant impediment at the early
10 stages of the litigation. This inability to disclose certain information was outside of its control because
11 of confidentiality requirements that have now been slightly modified by SB 32. Although the parties
12 stipulated to a protective order on May 24, 2019, many documents produced in preparation for the
13 hearing and for discovery purposes were heavily redacted because of the highly competitive nature of
14 the industry and sensitive financial and commercial information being produced.

15 All parties agree that the language of an initiative takes precedence over any regulation that is in
16 conflict and that an administrative agency has some discretion in determining how to implement the
17 initiative. The Court gives deference to the agency in establishing those regulations and creating the
18 framework required to implement those provisions in conformity with the initiative.

19
20
21 ³ The complaints filed by the parties participating in the hearing seek declaratory relief, injunctive relief and writs of
22 mandate, among other claims. The motions and joinders seeking injunctive relief which have been reviewed by the Court in
23 conjunction with this hearing include:

24 A786962-B Serenity: Serenity Plaintiffs' Motion for Preliminary Injunction filed 3/19/19 (Joinder to Motion by
25 Compassionate Team: 5/17; Joinder to Motion by ETW: 5/6 (filed in A787004); and Joinder to Motion by Nevada
26 Wellness: 5/10 (filed in A787540)); Opposition by the State filed 5/9/19 (Joinder by Essence/Thrive Entities: 5/23);
27 Opposition by Nevada Organic Remedies: 5/9 (Joinder by Lone Mountain: 5/13; Joinder by Helping Hands: 5/21; and
28 Joinder by Essence/Thrive Entities: 5/23). Application for TRO on OST filed 5/9/19 (Joinder by Compassionate Team:
5/17; and Joinder by ETW: 5/10 (filed in A787004)); Opposition by Nevada Organic Remedies: 5/9 (Joinder by Clear River:
5/9); Opposition by Essence/Thrive Entities: 5/10 (Joinder by GreenMart: 5/10; Joinder by Lone Mountain: 5/11; and
Joinder by helping Hands: 5/12).

A785818-W MM Development: MM Plaintiffs' Motion for Preliminary Injunction or Writ of Mandamus filed 5/9/19
(Joinder by Serenity: 5/20 (filed in A786962); Joinder by ETW: 5/6 (filed in A787004 and A785818); and Joinder by
Nevada Wellness: 5/10 (filed in A787540)).

1 The initiative to legalize recreational marijuana, Ballot Question 2 (“BQ2”), went to the voters
2 in 2016. The language of BQ2 is independent of any regulations that were adopted by the DoT. The
3 Court must balance the mandatory provisions of BQ2 (which the DoT did not have discretion to
4 modify);⁴ those provisions with which the DoT was granted some discretion in implementation;⁵ and
5 the inherent discretion of an administrative agency to implement regulations to carry out its statutory
6 duties. The Court must give great deference to those activities that fall within the discretionary
7 functions of the agency. Deference is not given where the actions of the DoT were in violation of BQ2
8 or were arbitrary and capricious.

9 FINDINGS OF FACT

10 1. Nevada allows voters to amend its Constitution or enact legislation through the initiative
11 process. Nevada Constitution, Article 19, Section 2.

12 ⁴ Article 19, Section 2(3) provides the touchstone for the mandatory provisions:

13 An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or
14 suspended by the Legislature within 3 years from the date it takes effect.

15 ⁵ NRS 453D.200(1) required the adoption of regulations for the licensure and oversight of recreational marijuana
16 cultivation, manufacturing/production, sales and distribution, but provides the DoT discretion in exactly what those
17 regulations would include.

18 . . . the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter.
19 The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations
20 that make their operation unreasonably impracticable. The regulations shall include:

21 (a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana
22 establishment;

23 (b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana
24 establishment;

25 (c) Requirements for the security of marijuana establishments;

26 (d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21
27 years of age;

28 (e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-
resistant packaging;

(f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana
establishments including a numerical indication of potency based on the ratio of THC to the weight of a product
intended for oral consumption;

(g) Requirements for record keeping by marijuana establishments;

(h) Reasonable restrictions on signage, marketing, display, and advertising;

(i) Procedures for the collection of taxes, fees, and penalties imposed by this chapter;

(j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another
qualified person and to enable a licensee to move the location of its establishment to another suitable location;

(k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and
marijuana establishments at the same location;

(l) Procedures to establish the fair market value at wholesale of marijuana; and

(m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any
violation of the provisions of NRS 453D.300.

1 2. In 2000, the voters amended Nevada’s Constitution to allow for the possession and use
2 of marijuana to treat various medical conditions. Nevada Constitution, Article 4, Section 38(1)(a). The
3 initiative left it to the Legislature to create laws “[a]uthoriz[ing] appropriate methods for supply of the
4 plant to patients authorized to use it.” Nevada Constitution, Article 4, Section 38(1)(e).

5 3. For several years prior to the enactment of BQ2, the regulation of medical marijuana
6 dispensaries had not been taken up by the Legislature. Some have argued in these proceedings that the
7 delay led to the framework of BQ2.

8 4. In 2013, Nevada’s legislature enacted NRS 453A, which allows for the cultivation and
9 sale of medical marijuana. The Legislature described the requirements for the application to open a
10 medical marijuana establishment. NRS 453A.322. The Nevada Legislature then charged the Division of
11 Public and Behavioral Health with evaluating the applications. NRS 453A.328.

12 5. The materials circulated to voters in 2016 for BQ2 described its purpose as the
13 amendment of the Nevada Revised Statutes as follows:
14

15 Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old or older, to
16 purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated
17 marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana
18 paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the
19 regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and
20 retailers; and provide for certain criminal penalties?

21 6. BQ2 was enacted by the Nevada Legislature and is codified at NRS 453D.⁶

22 7. BQ2 specifically identified regulatory and public safety concerns:

23 The People of the State of Nevada proclaim that marijuana should be regulated in a manner
24 similar to alcohol so that:

- 25 (a) Marijuana may only be purchased from a business that is licensed by the State of
26 Nevada;
27 (b) Business owners are subject to a review by the State of Nevada to confirm that the
28 business owners and the business location are suitable to produce or sell marijuana;
 (c) Cultivating, manufacturing, testing, transporting and selling marijuana will be strictly
 controlled through State licensing and regulation;

⁶ As the provisions of BQ2 and the sections NRS 453D currently in effect (with the exception of NRS 453D.205) are identical, for ease of reference the Court cites to BQ2 as enacted by the Nevada Legislature in NRS 453D.

- 1 (d) Selling or giving marijuana to persons under 21 years of age shall remain illegal;
2 (e) Individuals will have to be 21 years of age or older to purchase marijuana;
3 (f) Driving under the influence of marijuana will remain illegal; and
4 (g) Marijuana sold in the State will be tested and labeled.

5 NRS 453D.020(3).

6 8. BQ2 mandated the DoT to “conduct a background check of each prospective owner,
7 officer, and board member of a marijuana establishment license applicant.” NRS 453D.200(6).

8 9. On November 8, 2016, by Executive Order 2017-02, Governor Brian Sandoval
9 established a Task Force composed of 19 members to offer suggestions and proposals for legislative,
10 regulatory, and executive actions to be taken in implementing BQ2.

11 10. The Task Force’s findings, issued on May 30, 2017, referenced the 2014 licensing
12 process for issuing Medical Marijuana Establishment Registration Certificates under NRS 453A. The
13 Task Force recommended that “the qualifications for licensure of a marijuana establishment and the
14 impartial numerically scored bidding process for retail marijuana stores be maintained as in the medical
15 marijuana program except for a change in how local jurisdictions participate in selection of locations.”

16 11. Some of the Task Force’s recommendations appear to conflict with BQ2.⁷

17
18
19 ⁷ The Final Task Force report (Exhibit 2009) contained the following statements:

20 The Task Force recommends that retail marijuana ownership interest requirements remain consistent with the
21 medical marijuana program. . . .
22 at 2510.

23 The requirement identified by the Task Force at the time was contained in NAC 453A.302(1) which states:

24 Except as otherwise required in subsection 2, the requirements of this chapter concerning owners of medical
25 marijuana establishments only apply to a person with an aggregate ownership interest of 5 percent or more in a
26 medical marijuana establishment.

27 The second recommendation of concern is:

28 The Task Force recommends that NRS 453A be changed to address companies that own marijuana establishment
licenses in which there are owners with less than 5% ownership interest in the company. The statute should be
amended to:

*Limit fingerprinting, background checks and renewal of agent cards to owners officers and board members with
5% or less cumulatively of the company to once every five years;

*Only require owners officers and board members with 5% or more cumulatively and employees of the company to
obtain agent registration cards; and

1 12. During the 2017 legislative session Assembly Bill 422 transferred responsibility for the
2 registration, licensing, and regulation of marijuana establishments from the State of Nevada Division of
3 Public and Behavioral Health to the DoT.⁸

4 13. On February 27, 2018, the DoT adopted regulations governing the issuance, suspension,
5 or revocation of retail recreational marijuana licenses in LCB File No. R092-17, which were codified in
6 NAC 453D (the “Regulations”).

7 14. The Regulations for licensing were to be “directly and demonstrably related to the
8 operation of a marijuana establishment.” NRS 453D.200(1)(b). The phrase “directly and demonstrably
9 related to the operation of a marijuana establishment” is subject to more than one interpretation.
10

11
12
13
14
15
16
17
18 *Use the marijuana establishments governing documents to determine who has approval rights and signatory
19 authority for purposes of signing ownership transfers, applications and any other appropriate legal or regulatory
documents.

20 There was Task Force dissent on the recommendation. The concern with this recommendation was that by
21 changing the requirements on fingerprinting and background checks, the state would have less knowledge of when
an owner, officer, and board member commits an offense not allowed under current marijuana law, potentially
creating a less safe environment in the state.
at 2515-2516.

22 ⁸ Those provisions (a portion of which became NRS 453D.205) are consistent with BQ2:

23
24 1. When conducting a background check pursuant to subsection 6 of NRS 453D.200, the Department may
25 require each prospective owner, officer and board member of a marijuana establishment license applicant to submit
a complete set of fingerprints and written permission authorizing the Department to forward the fingerprints to the
Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation
for its report.

26 2. When determining the criminal history of a person pursuant to paragraph (c) of subsection 1 of NRS
27 453D.300, a marijuana establishment may require the person to submit to the Department a complete set of
fingerprints and written permission authorizing the Department to forward the fingerprints to the Central
Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its
28 report.

1 15. A person holding a medical marijuana establishment registration certificate could apply
2 for one or more recreational marijuana establishment licenses within the time set forth by the DoT in
3 the manner described in the application. NAC 453D.268.⁹

4
5 ⁹ Relevant portions of that provision require that application be made

6 ...by submitting an application in response to a request for applications issued pursuant to NAC 453D.260 which
7 must include:

8 ***

- 9 2. An application on a form prescribed by the Department. The application must include, without limitation:
- 10 (a) Whether the applicant is applying for a license for a marijuana establishment for a marijuana cultivation
11 facility, a marijuana distributor, a marijuana product manufacturing facility, a marijuana testing facility or a retail
12 marijuana store;
- 13 (b) The name of the proposed marijuana establishment, as reflected in both the medical marijuana establishment
14 registration certificate held by the applicant, if applicable, and the articles of incorporation or other documents filed
15 with the Secretary of State;
- 16 (c) The type of business organization of the applicant, such as individual, corporation, partnership, limited-liability
17 company, association or cooperative, joint venture or any other business organization;
- 18 (d) Confirmation that the applicant has registered with the Secretary of State as the appropriate type of business,
19 and the articles of incorporation, articles of organization or partnership or joint venture documents of the applicant;
- 20 (e) The physical address where the proposed marijuana establishment will be located and the physical address of
21 any co-owned or otherwise affiliated marijuana establishments;
- 22 (f) The mailing address of the applicant;
- 23 (g) The telephone number of the applicant;
- 24 (h) The electronic mail address of the applicant;
- 25 (i) A signed copy of the Request and Consent to Release Application Form for Marijuana Establishment License
26 prescribed by the Department;
- 27 (j) If the applicant is applying for a license for a retail marijuana store, the proposed hours of operation during
28 which the retail marijuana store plans to be available to sell marijuana to consumers;
- 29 (k) An attestation that the information provided to the Department to apply for the license for a marijuana
30 establishment is true and correct according to the information known by the affiant at the time of signing; and
- 31 (l) The signature of a natural person for the proposed marijuana establishment as described in subsection 1 of NAC
32 453D.250 and the date on which the person signed the application.
- 33 3. Evidence of the amount of taxes paid, or other beneficial financial contributions made, to this State or its
34 political subdivisions within the last 5 years by the applicant or the persons who are proposed to be owners, officers
35 or board members of the proposed marijuana establishment.
- 36 4. A description of the proposed organizational structure of the proposed marijuana establishment, including,
37 without limitation:
- 38 (a) An organizational chart showing all owners, officers and board members of the proposed marijuana
39 establishment;
- 40 (b) A list of all owners, officers and board members of the proposed marijuana establishment that contains the
41 following information for each person:
- 42 (1) The title of the person;
- 43 (2) The race, ethnicity and gender of the person;
- 44 (3) A short description of the role in which the person will serve for the organization and his or her
45 responsibilities;
- 46 (4) Whether the person will be designated by the proposed marijuana establishment to provide written notice to
47 the Department when a marijuana establishment agent is employed by, volunteers at or provides labor as a
48 marijuana establishment agent at the proposed marijuana establishment;
- 49 (5) Whether the person has served or is currently serving as an owner, officer or board member for another
50 medical marijuana establishment or marijuana establishment;
- 51 (6) Whether the person has served as an owner, officer or board member for a medical marijuana establishment
52 or marijuana establishment that has had its medical marijuana establishment registration certificate or license, as
53 applicable, revoked;

1 NRS 453D.210(6) mandated the DoT to use “an impartial and numerically scored competitive bidding
2 process” to determine successful applicants where competing applications were submitted.

3 16. NAC 453D.272(1) provides the procedure for when the DoT receives more than one
4 “complete” application. Under this provision the DoT will determine if the “application is complete and

5 (7) Whether the person has previously had a medical marijuana establishment agent registration card or
6 marijuana establishment agent registration card revoked;

7 (8) Whether the person is an attending provider of health care currently providing written documentation for the
8 issuance of registry identification cards or letters of approval;

9 (9) Whether the person is a law enforcement officer;

10 (10) Whether the person is currently an employee or contractor of the Department; and

11 (11) Whether the person has an ownership or financial investment interest in any other medical marijuana
12 establishment or marijuana establishment.

13 5. For each owner, officer and board member of the proposed marijuana establishment:

14 (a) An attestation signed and dated by the owner, officer or board member that he or she has not been convicted of
15 an excluded felony offense, and that the information provided to support the application for a license for a
16 marijuana establishment is true and correct;

17 (b) A narrative description, not to exceed 750 words, demonstrating:

18 (1) Past experience working with governmental agencies and highlighting past experience in giving back to the
19 community through civic or philanthropic involvement;

20 (2) Any previous experience at operating other businesses or nonprofit organizations; and

21 (3) Any demonstrated knowledge, business experience or expertise with respect to marijuana; and

22 (c) A resume.

23 6. Documentation concerning the size of the proposed marijuana establishment, including, without limitation,
24 building and general floor plans with supporting details.

25 7. The integrated plan of the proposed marijuana establishment for the care, quality and safekeeping of marijuana
26 from seed to sale, including, without limitation, a plan for testing and verifying marijuana, a transportation or
27 delivery plan and procedures to ensure adequate security measures, including, without limitation, building security
28 and product security.

8. A plan for the business which includes, without limitation, a description of the inventory control system of the
proposed marijuana establishment to satisfy the requirements of NRS 453D.300 and NAC 453D.426.

9. A financial plan which includes, without limitation:

(a) Financial statements showing the resources of the applicant;

(b) If the applicant is relying on money from an owner, officer or board member, evidence that the person has
unconditionally committed such money to the use of the applicant in the event the Department awards a license to
the applicant and the applicant obtains the necessary approvals from the locality to operate the proposed marijuana
establishment; and

(c) Proof that the applicant has adequate money to cover all expenses and costs of the first year of operation.

10. Evidence that the applicant has a plan to staff, educate and manage the proposed marijuana establishment on a
daily basis, which must include, without limitation:

(a) A detailed budget for the proposed marijuana establishment, including pre-opening, construction and first-year
operating expenses;

(b) An operations manual that demonstrates compliance with this chapter;

(c) An education plan which must include, without limitation, providing educational materials to the staff of the
proposed marijuana establishment; and

(d) A plan to minimize the environmental impact of the proposed marijuana establishment.

11. If the application is submitted on or before November 15, 2018, for a license for a marijuana distributor,
proof that the applicant holds a wholesale dealer license issued pursuant to chapter 369 of NRS, unless the
Department determines that an insufficient number of marijuana distributors will result from this limitation.

12. A response to and information which supports any other criteria the Department determines to be relevant,
which will be specified and requested by the Department at the time the Department issues a request for
applications which includes the point values that will be allocated to the applicable portions of the application
pursuant to subsection 2 of NAC 453D.260.

1 in compliance with this chapter and Chapter 453D of NRS, the Department will rank the applications . .
2 . in order from first to last based on the compliance with the provisions of this chapter and chapter
3 453D of NRS and on the content of the applications relating to . . .” several enumerated factors. NAC
4 453D.272(1).

5 17. The factors set forth in NAC 453D.272(1) that are used to rank competing applications
6 (collectively, the “Factors”) are:

- 7 (a) Whether the owners, officers or board members have experience operating another kind
8 of business that has given them experience which is applicable to the operation of a marijuana
9 establishment;
10 (b) The diversity of the owners, officers or board members of the proposed marijuana
11 establishment;
12 (c) The educational achievements of the owners, officers or board members of the proposed
13 marijuana establishment;
14 (d) The financial plan and resources of the applicant, both liquid and illiquid;
15 (e) Whether the applicant has an adequate integrated plan for the care, quality and
16 safekeeping of marijuana from seed to sale;
17 (f) The amount of taxes paid and other beneficial financial contributions, including, without
18 limitation, civic or philanthropic involvement with this State or its political subdivisions, by the
19 applicant or the owners, officers or board members of the proposed marijuana establishment;
20 (g) Whether the owners, officers or board members of the proposed marijuana establishment
21 have direct experience with the operation of a medical marijuana establishment or marijuana
22 establishment in this State and have demonstrated a record of operating such an establishment in
23 compliance with the laws and regulations of this State for an adequate period of time to
24 demonstrate success;
25 (h) The (unspecified) experience of key personnel that the applicant intends to employ in
26 operating the type of marijuana establishment for which the applicant seeks a license; and
27 (i) Any other criteria that the Department determines to be relevant.

18 18. Each of the Factors is within the DoT’s discretion in implementing the application
19 process provided for in BQ2. The DoT had a good-faith basis for determining that each of the Factors
20 is “directly and demonstrably related to the operation of a marijuana establishment.”

21 19. The DoT posted the application on its website and released the application for
22 recreational marijuana establishment licenses on July 6, 2018.¹⁰

23
24
25
26
27
28 ¹⁰ The DoT made a change to the application after circulating the first version of the application to delete the
requirement of a physical location. The modification resulted in a different version of the application bearing the same
“footer” with the original version remaining available on the DoT’s website.

1 20. The DoT utilized a question and answer process through a generic email account at
2 marijuana@tax.state.nv.us to allow applicants to ask questions and receive answers directly from the
3 Department, which were not consistent with NRS 453D, and that information was not further
4 disseminated by the DoT to other applicants.

5 21. In addition to the email question and answer process, the DoT permitted applicants and
6 their representatives to personally contact the DoT staff about the application process.

7 22. The application period ran from September 7, 2018 through September 20, 2018.

8 23. The DoT accepted applications in September 2018 for retail recreational marijuana
9 licenses and announced the award of conditional licenses in December 2018.

10 24. The DoT used a listserv to communicate with prospective applicants.

11 25. The DoT published a revised application on July 30, 2018. This revised application was
12 sent to all participants in the DoT's listserv directory. The revised application modified a sentence on
13 attachment A of the application. Prior to this revision, the sentence had read, "Marijuana
14 Establishment's proposed physical address (this must be a Nevada address and cannot be a P.O. Box)."
15 The revised application on July 30, 2018, read: "Marijuana Establishment's proposed physical address
16 if the applicant owns property or has secured a lease or other property agreement (this must be a
17 Nevada address and not a P.O. Box). Otherwise, the applications are virtually identical.

18 26. The DoT sent a copy of the revised application through the listserv service used by the
19 DoT. Not all Plaintiffs' correct emails were included on this listserv service.

20 27. The July 30, 2018 application, like its predecessor, described how applications were to
21 be scored. The scoring criteria was divided into identified criteria and non-identified criteria. The
22 maximum points that could be awarded to any applicant based on these criteria was 250 points.
23

24 28. The identified criteria consisted of organizational structure of the applicant (60 points);
25 evidence of taxes paid to the State of Nevada by owners, officers, and board members of the applicant
26
27
28

1 in the last 5 years (25 points); a financial plan (30 points); and documents from a financial institution
2 showing unencumbered liquid assets of \$250,000 per location for which an application is submitted.

3 29. The non-identified criteria consisted of documentation concerning the integrated plan of
4 the proposed marijuana establishment for the care, quality and safekeeping of marijuana from seed to
5 sale (40 points); evidence that the applicant has a plan to staff, educate and manage the proposed
6 recreational marijuana establishment on a daily basis (30 points); a plan describing operating
7 procedures for the electronic verification system of the proposed marijuana establishment and
8 describing the proposed establishment's inventory control system (20 points); building plans showing
9 the proposed establishment's adequacy to serve the needs of its customers (20 points); and, a proposal
10 explaining likely impact of the proposed marijuana establishment in the community and how it will
11 meet customer needs (15 points).
12

13 30. An applicant was permitted to submit a single application for all jurisdictions in which it
14 was applying, and the application would be scored at the same time.
15

16 31. By September 20, 2018, the DoT received a total of 462 applications.

17 32. In order to grade and rank the applications the DoT posted notices that it was seeking to
18 hire individuals with specified qualifications necessary to evaluate applications. The DoT interviewed
19 applicants and made decisions on individuals to hire for each position.

20 33. When decisions were made on who to hire, the individuals were notified that they would
21 need to register with "Manpower" under a pre-existing contract between the DoT and that company.
22 Individuals would be paid through Manpower, as their application-grading work would be of a
23 temporary nature.
24

25 34. The DoT identified, hired, and trained eight individuals to grade the applications,
26 including three to grade the identified portions of the applications, three to grade the non-identified
27
28

1 portions of the applications, and one administrative assistant for each group of graders (collectively the
2 “Temporary Employees”).

3 35. It is unclear how the DoT trained the Temporary Employees. While portions of the
4 training materials were introduced into evidence, testimony regarding the oral training based upon
5 example applications was insufficient for the Court to determine the nature and extent of the training of
6 the Temporary Employees.¹¹

7 36. NAC 453D.272(1) required the DoT to determine that an Application is “complete and
8 in compliance” with the provisions of NAC 453D in order to properly apply the licensing criteria set
9 forth therein and the provisions of the Ballot Initiative and the enabling statute.
10

11 37. When the DoT received applications, it undertook no effort to determine if the
12 applications were in fact “complete and in compliance.”

13 38. In evaluating whether an application was “complete and in compliance” the DoT made
14 no effort to verify owners, officers or board members (except for checking whether a transfer request
15 was made and remained pending before the DoT).
16

17 39. For purposes of grading the applicant’s organizational structure and diversity, if an
18 applicant’s disclosure in its application of its owners, officers, and board members did not match the
19 DoT’s own records, the DoT did not penalize the applicant. Rather the DoT permitted the grading, and
20 in some cases, awarded a conditional license to an applicant under such circumstances, and dealt with
21 the issue by simply informing the winning applicant that its application would have to be brought into
22 conformity with DoT records.
23

24 40. The DoT created a Regulation that modified the mandatory BQ2 provision “[t]he
25 Department shall conduct a background check of each prospective owner, officer, and board member of
26 a marijuana establishment license applicant” and determined it would only require information on the
27

28 ¹¹ Given the factual issues related to the grading raised by MM and LivFree, these issues may be subject to additional evidentiary proceedings in the assigned department.

1 application from persons “with an aggregate ownership interest of 5 percent or more in a marijuana
2 establishment.” NAC 453D.255(1).

3 41. NRS 453D.200(6) provides that “[t]he DoT shall conduct a background check of each
4 prospective owner, officer, and board member of a marijuana establishment license applicant.” The
5 DoT departed from this mandatory language in NAC 453D.255(1) and made no attempt in the
6 application process to verify that the applicant’s complied with the mandatory language of the BQ2 or
7 even the impermissibly modified language.

8 42. The DoT made the determination that it was not reasonable to require industry to
9 provide every owner of a prospective licensee. The DOT’s determination that only owners of a 5% or
10 greater interest in the business were required to submit information on the application was not a
11 permissible regulatory modification of BQ2. This determination violated Article 19, Section 3 of the
12 Nevada Constitution. The determination was not based on a rational basis.

13 43. The limitation of “unreasonably impracticable” in BQ2¹² does not apply to the
14 mandatory language of BQ2, but to the Regulations which the DoT adopted.

15 44. The adoption of NAC 453D.255(1), as it applies to the application process is an
16 unconstitutional modification of BQ2.¹³ The failure of the DoT to carry out the mandatory provisions
17 of NRS 453D.200(6) is fatal to the application process.¹⁴ The DoT’s decision to adopt regulations in
18 direct violation of BQ2’s mandatory application requirements is violative of Article 19, Section 2(3) of
19 the Nevada Constitution.
20
21

22 ¹² NRS 453D.200(1) provides in part:

23 The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations
24 that make their operation unreasonably impracticable.

25 ¹³ For administrative and regulatory proceedings other than the application, the limitation of 5% or greater ownership
26 appears within the DoT’s discretion.

27 ¹⁴ That provision states:

28 6. The Department shall conduct a background check of each prospective owner, officer, and board member of a
marijuana establishment license applicant.

1 45. Given the lack of a robust investigative process for applicants, the requirement of the
2 background check for each prospective owner, officer, and board member as part of the application
3 process impedes an important public safety goal in BQ2.

4 46. Without any consideration as to the voters mandate in BQ2, the DoT determined that
5 requiring each prospective owner be subject to a background check was too difficult for
6 implementation by industry. This decision was a violation of the Nevada Constitution, an abuse of
7 discretion, and arbitrary and capricious.

8
9 47. The DoT did not comply with BQ2 by requiring applicants to provide information for
10 each prospective owner, officer and board member or verify the ownership of applicants applying for
11 retail recreational marijuana licenses. Instead the DoT issued conditional licenses to applicants who
12 did not identify each prospective owner, officer and board member.¹⁵

13 48. The DoT's late decision to delete the physical address requirement on some application
14 forms while not modifying those portions of the application that were dependent on a physical location
15 (i.e. floor plan, community impact, security plan, and the sink locations) after the repeated
16 communications by an applicant's agent; not effectively communicating the revision; and, leaving the
17 original version of the application on the website, is evidence of conduct that is a serious issue.

18
19 49. Pursuant to NAC 453D.295, the winning applicants received a conditional license that
20 will not be finalized unless within twelve months of December 5, 2018, the licensees receive a final
21 inspection of their marijuana establishment.

22
23
24
25 ¹⁵ Some applicants apparently provided the required information for each prospective owner, officer and board
26 member. Accepting as truthful these applicants' attestations regarding who their owners, officers, and board members were
27 at the time of the application, these applications were complete at the time they were filed with reference to NRS
28 453D.200(6). These entities are Green Therapeutics LLC, Eureka NewGen Farms LLC, Circle S Farms LLC, Deep Roots
Medical LLC, Pure Tonic Concentrates LLC, Wellness Connection of Nevada LLC, Polaris Wellness Center LLC, and
TRNVP098 LLC, Clear River LLC, Cheyenne Medical LLC, Essence Tropicana LLC, Essence Henderson LLC, and
Commerce Park Medical LLC. See Court Exhibit 3 (post-hearing submission by the DoT).

1 59. NRS 33.010 governs cases in which an injunction may be granted. The applicant must
2 show (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving
3 party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is
4 an inadequate remedy.

5 60. Plaintiffs have the burden to demonstrate that the DoT's conduct, if allowed to continue,
6 will result in irreparable harm for which compensatory damages is an inadequate remedy.

7 61. The purpose of a preliminary injunction is to preserve the *status quo* until the matter can
8 be litigated on the merits.

9 62. In *City of Sparks v. Sparks Mun. Court*, the Supreme Court explained, "[a]s a
10 constitutional violation may be difficult or impossible to remedy through money damages, such a
11 violation may, by itself, be sufficient to constitute irreparable harm." 129 Nev. 348, 357, 302 P.3d
12 1118, 1124 (2013).

13 63. Article 19, Section 2 of the Constitution of the State of Nevada provides, in pertinent
14 part:
15

16
17 "1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the
18 limitations of section 6 of this article, **the people reserve to themselves the power to propose,**
19 **by initiative petition, statutes and amendments to statutes and amendments to this**
20 **constitution, and to enact or reject them at the polls.**

21 ...

22 3. If the initiative petition proposes a statute or an amendment to a statute, the person who
23 intends to circulate it shall file a copy with the secretary of state before beginning circulation
24 and not earlier than January 1 of the year preceding the year in which a regular session of the
25 legislature is held. After its circulation, it shall be filed with the secretary of state not less than
26 30 days prior to any regular session of the legislature. The circulation of the petition shall cease
27 on the day the petition is filed with the secretary of state or such other date as may be prescribed
28 for the verification of the number of signatures affixed to the petition, whichever is earliest. The
secretary of state shall transmit such petition to the legislature as soon as the legislature
convenes and organizes. The petition shall take precedence over all other measures except
appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted
or rejected by the legislature without change or amendment within 40 days. If the proposed
statute or amendment to a statute is enacted by the legislature and approved by the governor in
the same manner as other statutes are enacted, such statute or amendment to a statute shall
become law, but shall be subject to referendum petition as provided in section 1 of this article.

1 If the statute or amendment to a statute is rejected by the legislature, or if no action is taken
2 thereon within 40 days, the secretary of state shall submit the question of approval or
3 disapproval of such statute or amendment to a statute to a vote of the voters at the next
4 succeeding general election. If a majority of the voters voting on such question at such election
5 votes approval of such statute or amendment to a statute, it shall become law and take effect
6 upon completion of the canvass of votes by the supreme court. **An initiative measure so
7 approved by the voters shall not be amended, annulled, repealed, set aside or suspended
8 by the legislature within 3 years from the date it takes effect.**”

9 (Emphasis added.)

10 64. The Nevada Supreme Court has recognized that “[i]nitiative petitions must be kept
11 substantively intact; otherwise, the people’s voice would be obstructed. . . [I]nitiative legislation is not
12 subject to judicial tampering-the substance of an initiative petition should reflect the unadulterated will
13 of the people and should proceed, if at all, as originally proposed and signed. For this reason, our
14 constitution prevents the Legislature from changing or amending a proposed initiative petition that is
15 under consideration.” Rogers v. Heller, 117 Nev. 169, 178, 18 P.3d 1034,1039–40 (2001).

16 65. BQ2 provides, “the Department shall adopt all regulations necessary or convenient to
17 carry out the provisions of this chapter.” NRS 453D.200(1). **This language does not confer upon the
18 DoT unfettered or unbridled authority to do whatever it wishes without constraint.** The DoT was not
19 delegated the power to legislate amendments because this is initiative legislation. The Legislature itself
20 has no such authority with regard to NRS 453D until three years after its enactment under the
21 prohibition of Article 19, Section 2 of the Constitution of the State of Nevada.

22 66. Where, as here, amendment of a voter-initiated law is temporally precluded from
23 amendment for three years, the administrative agency may not modify the law.

24 67. NRS 453D.200(1) provides that “the Department shall adopt all regulations necessary or
25 convenient to carry out the provisions of this chapter.” The Court finds that the words “necessary or
26 convenient” are susceptible to at least two reasonable interpretations. This limitation applies only to
27 Regulations adopted by the DoT.
28

1 68. While the category of diversity is not specifically included in the language of BQ2, the
2 evidence presented in the hearing demonstrates that a rational basis existed for the inclusion of this
3 category in the Factors and the application.

4 69. The DoT's inclusion of the diversity category was implemented in a way that created a
5 process which was partial and subject to manipulation by applicants.

6 70. The DoT staff provided various applicants with different information as to what would
7 be utilized from this category and whether it would be used merely as a tiebreaker or as a substantive
8 category.
9

10 71. Based upon the evidence adduced, the Court finds that the DoT selectively discussed
11 with applicants or their agents the modification of the application related to physical address
12 information.

13 72. The process was impacted by personal relationships in decisions related to the
14 requirements of the application and the ownership structures of competing applicants. This in and of
15 itself is insufficient to void the process as urged by some of the Plaintiffs.
16

17 73. The DoT disseminated various versions of the 2018 Retail Marijuana Application, one
18 of which was published on the DoT's website and required the applicant to provide an actual physical
19 Nevada address for the proposed marijuana establishment, and not a P.O. Box, (*see* Exhibit 5), whereas
20 an alternative version of the DoT's application form, which was not made publicly available and was
21 distributed to some, but not all, of the applicants via a DoT listserv service, deleted the requirement that
22 applicants disclose an actual physical address for their proposed marijuana establishment. *See* Exhibit
23 5A.
24

25 74. The applicants were applying for conditional licensure, which would last for 1 year.
26 NAC 453D.282. The license was conditional based on the applicant's gaining approval from local
27
28

1 authorities on zoning and land use, the issuance of a business license, and the Department of Taxation
2 inspections of the marijuana establishment.

3 75. The DoT has only awarded conditional licenses which are subject to local government
4 approval related to zoning and planning and may approve a location change of an existing license, the
5 public safety aspects of the failure to require an actual physical address can be cured prior to the award
6 of a final license.

7 76. By selectively eliminating the requirement to disclose an actual physical address for
8 each and every proposed retail recreational marijuana establishment, the DoT limited the ability of the
9 Temporary Employees to adequately assess graded criteria such as (i) prohibited proximity to schools
10 and certain other public facilities, (ii) impact on the community, (iii) security, (iv) building plans, and
11 (v) other material considerations prescribed by the Regulations.

12 77. The hiring of Temporary Employees was well within the DoT's discretionary power.

13 78. The evidence establishes that the DoT failed to properly train the Temporary
14 Employees. This is not an appropriate basis for the requested injunctive relief unless it makes the
15 grading process unfair. 

16 79. The DoT failed to establish any quality assurance or quality control of the grading done
17 by Temporary Employees.¹⁷ This is not an appropriate basis for the requested injunctive relief unless it
18 makes the grading process unfair. 

19 80. The DoT made licensure conditional for one year based on the grant of power to create
20 regulations that develop "[p]rocedures for the issuance, renewal, suspension, and revocation of a
21 license to operate a marijuana establishment." NRS 453D.200(1)(a). This was within the DoT's
22 discretion.
23
24
25
26
27

28 ¹⁷ The Court makes no determination as to the extent which the grading errors alleged by MM and Live Free may be subject to other appropriate writ practice related to those individualized issues by the assigned department.

1 81. Certain of DoT's actions related to the licensing process were nondiscretionary
2 modifications of BQ2's mandatory requirements. The evidence establishes DoT's deviations
3 constituted arbitrary and capricious conduct without any rational basis for the deviation.

4 82. The DoT's decision to not require disclosure on the application and to not conduct
5 background checks of persons owning less than 5% prior to award of a conditional license is an
6 impermissible deviation from the mandatory language of BQ2, which mandated "a background check
7 of each prospective owner, officer, and board member of a marijuana establishment license applicant."
8 NRS 453D.200(6).

9 83. The argument that the requirement for each owner to comply with the application
10 process and background investigation is "unreasonably impracticable" is misplaced. The limitation of
11 unreasonably impracticable applied only to the Regulations not to the language and compliance with
12 BQ2 itself.

13 84. Under the circumstances presented here, the Court concludes that certain of the
14 Regulations created by the DoT are unreasonable, inconsistent with BQ2 and outside of any discretion
15 permitted to the DoT.

16 85. The DoT acted beyond its scope of authority when it arbitrarily and capriciously
17 replaced the mandatory requirement of BQ2, for the background check of each prospective owner,
18 officer and board member with the 5% or greater standard in NAC 453.255(1). This decision by the
19 DoT was not one they were permitted to make as it resulted in a modification of BQ2 in violation of
20 Article 19, Section 2(3) of the Nevada Constitution.

21 86. As Plaintiffs have shown that the DoT clearly violated NRS Chapter 453D, the claims
22 for declaratory relief, petition for writ of prohibition, and any other related claims is likely to succeed
23 on the merits.

24 87. The balance of equities weighs in favor of Plaintiffs.
25
26
27
28

1 88. “[N]o restraining order or preliminary injunction shall issue except upon the giving of
2 adequate security by the applicant, in such sum as the court deems proper, for the payment of such
3 costs and damages as may be incurred or suffered by any party who is found to be wrongfully enjoined
4 or restrained.” NRCP 65(d).

5 89. The DoT stands to suffer no appreciable losses and will suffer only minimal harm as a
6 result of an injunction.

7 90. Therefore, a security bond already ordered in the amount of \$400,000 is sufficient for
8 the issuance of this injunctive relief.¹⁸

9 91. If any conclusions of law are properly findings of fact, they shall be treated as if
10 appropriately identified and designated.
11

12 / / / / /
13 / / / / /
14 / / / / /
15 / / / / /
16 / / / / /
17 / / / / /
18 / / / / /
19 / / / / /
20 / / / / /
21 / / / / /
22 / / / / /
23 / / / / /
24 / / / / /

25
26
27 ¹⁸ As discussed during the preliminary injunction hearing, the Court sets a separate evidentiary hearing on whether to
28 increase the amount of this bond. That hearing is set for August 29, 2019, at 9:00 a.m.

ORDER

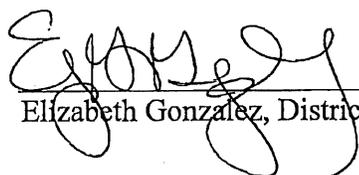
IT IS HEREBY ADJUDGED ORDERED AND DECREED that Plaintiffs' Motions for Preliminary Injunction are granted in part.

The State is enjoined from conducting a final inspection of any of the conditional licenses issued in or about December 2018 who did not provide the identification of each prospective owner, officer and board member as required by NRS 453D.200(6) pending a trial on the merits.¹⁹

The issue of whether to increase the existing bond is set for hearing on August 29, 2019, at 9:00 am.

The parties in A786962 and A787004 are to appear for a Rule 16 conference September 9, 2019, at 9:00 am and submit their respective plans for discovery on an expedited schedule by noon on September 6, 2019.

DATED this 23rd day of August 2019.

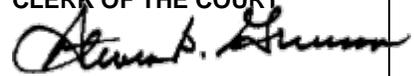

Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, this Order was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.


Dan Kutinac

¹⁹ As Court Exhibit 3 is a post-hearing submission by the DoT, the parties may file objections and/or briefs related to this issue. Any issues related to the inclusion or exclusion from this group will be heard August 29, 2019, at 9:00 am.



RPLY

AMY L. SUGDEN, ESQ.

Amy L. Sugden, Bar No. 9983
9728 Gillespie St.

Las Vegas, Nevada 89183

Telephone: (702) 307-1500

Facsimile: (702) 507-9011

Attorney for THC Nevada, LLC

SIGAL CHATTAH, ESQ.

Nev. Bar No.: 8264

CHATTAH LAW GROUP

5875 S. Rainbow Blvd. #203

Las Vegas, Nevada 89118

Tel.: (702) 360-6200

Fax: (702) 643-6292

Chattahlaw@gmail.com

Attorney for Plaintiff

Herbal Choice, Inc.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,

) Case No.: A-19-787004-B

)
) Dept. No: XI

) CONSOLIDATED WITH:

) A-18-785818-W

) A-18-786357-W

) A-19-786962-B

) A-19-787035-C

) A-19-787540-W

) A-19-787726-C

) A-19-801416-B

**REPLY TO OPPOSITION TO *EX PARTE* APPLICATION FOR TEMPORARY
RESTRAINING ORDER WITH NOTICE AND MOTION FOR PRELIMINARY
INJUNCTION ON ORDER SHORTENING TIME**

1 COMES NOW, THC NEVADA, LLC (“THC NV”), by and through its counsel, Amy L.
2 Sugden, and HERBAL CHOICE, INC. (hereinafter HERBAL CHOICE) by and through its Counsel,
3 SIGAL CHATTAH, ESQ. of CHATTAH LAW GROUP, and hereby submit their Reply to Opposition
4 to *ex parte* application for temporary restraining order with notice, and motion for preliminary
5 injunction to prevent certain parties from attempting to enter into a partial settlement to redistribute
6 privileged marijuana dispensary licenses from certain Intervenors to certain Plaintiffs, among other
7 material terms. THC NV and HERBAL CHOICE will suffer irreparable injury if a Temporary
8 Restraining Order (“TRO”) and/or Preliminary Injunction does not issue to prevent this attempted
9 redistribution of licenses and the parties attempt to strong arm THC NV, HERBAL CHOICE and
10 remaining Plaintiffs into a dismissal of their claims.
11

12
13 DATED this 30th day of July 2020

14
15 SIGAL CHATTAH, ESQ

AMY L. SUGDEN, ESQ.

16 /s/ Sigal Chattah
17 Sigal Chattah
18 Nevada Bar No. 8264
19 5875 S. Rainbow Blvd #203
20 Las Vegas, NV 89118
Attorney for Plaintiff
Herbal Choice, Inc.

/s/ Amy L. Sugden
Amy L. Sugden
Nevada Bar No 9983
9728 Gilespe Street
Las Vegas, NV 89183
Attorney for Plaintiff
THC Nevada, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

As set forth in THC NV and HERBAL CHOICE’s Application for Temporary Restraining Order and Motion for Preliminary Injunction (“TRO Application”), the parties to the Partial Settlement Agreement are, for some unspecified reason, seeking to obtain surreptitiousness approval from the Nevada Tax Commission of their purported settlement, which remains unapproved by this Court as required by NRCPC 41(a)(2).¹

Approximately twenty-four hours after THC NV and HERBAL CHOICE submitted their TRO Application to the Court, the parties to the Partial Settlement announced that they had actually executed a partial settlement agreement dated July 28, 2020, a copy of which is attached hereto as Exhibit “1” (“Partial Settlement Agreement”). As will be discussed below, not only is the Partial Settlement Agreement unenforceable; it is riddled with countless contingencies; and most repugnantly contains a clause that mandates:

Settling Plaintiffs **will** file a Motion to Intervene as Defendants/Intervenors in the Lawsuit and participate in the Lawsuit in good faith and shall use best efforts to defend against the Lawsuit.

Id. at Section 13 “Continued Participation by Settling Plaintiffs”.

This directive flies in the face of Nevada Rules of Professional Conduct 1.9, Duties to Former Clients, *as both THC NV and HERBAL CHOICE*, are former clients of Brownstein Hyatt Farber Schreck (“Brownstein Hyatt”).

This Court should not perpetuate and condone such behavior nor allow the continued workaround efforts to sanction this pitiable Partial Settlement Agreement. As such, THC NV and HERBAL CHOICE request the Court grants their TRO Application.

¹ Pursuant to NRCPC 41(a)(1)(A)(ii), a stipulation of dismissal can also occur when it is signed by *ALL* parties who have appeared, which certainly has not occurred in this instance. There has been no stipulation and order to dismiss even proposed to all the parties in the action nor a good faith motion for settlement; rather mere circulation of an unenforceable settlement agreement after it was executed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.
LEGAL ARGUMENT

A. THC NV and HERBAL CHOICE are Entitled to a Temporary Restraining Order Due to The Blatant Violation of the Nevada Rules of Professional Conduct 1.9 That Will Result in Irreparable Harm

Now that the terms of the covert Partial Settlement have been made public,² THC NV and HERBAL CHOICE confirmed their well-founded fears. The Partial Settlement Agreement is designed not simply to resolve the settling parties' disputes amongst themselves in agreeing to redistribute coveted dispensary licenses from the "haves" to the "have nots", but the Partial Settlement Agreement is **designed specifically and purposely to eradicate the remaining parties' rights in this lawsuit.** See Exhibit "1", generally. The goal being, of course, to put pressure on the Non-Settling Parties to settle so that the Settling Parties can enjoy this redistribution of marijuana licenses it created amongst itself, with other random and numerous contingencies (e.g., mandating that the Cannabis Compliance Board ("CCB") support an industry funding study for certain topics of the Settling Parties' concerns).

As referenced above, most overtly, the Settling Parties state that upon execution of the Partial Settlement Agreement, the "WILL" file a motion to intervene as Defendants/Intervenors in the current action and participate in good faith and use best efforts to defend against the lawsuit. *Id.* at Section 13. This is baffling to THC NV and HERBAL CHOICE, whom, up until just very recently, were clients of Brownstein Hyatt. See Substitutions of Counsel on file herein. As such, under Nevada Rules of Professional Conduct 1.9, Brownstein Hyatt, owes certain duties to THC NV and HERBAL CHOICE.

² <https://tax.nv.gov/Boards/Public Meetings/>

1 **Rule 1.9. Duties to Former Clients:**

2 (a) A lawyer who has formerly represented a client in a matter **shall not**
3 thereafter represent another person in the same or a substantially related
4 matter in which that person’s interests are materially adverse to the interests
5 of the former client unless the former client gives informed consent,
6 confirmed in writing.

7 (b) A lawyer shall not knowingly represent a person in the same or a
8 substantially related matter in which a firm with which the lawyer formerly
9 was associated had previously represented a client:

- 10 (1) Whose interests are materially adverse to that person; and
11 (2) About whom the lawyer had acquired information protected by
12 Rules 1.6 and 1.9(c) that is material to the matter
13 (3) Unless the former client gives informed consent, confirmed in
14 writing.

15 (c) A lawyer who has formerly represented a client in a matter or whose
16 present or former firm has formerly represented a client in a matter shall not
17 thereafter:

- 18 (1) Use information relating to the representation to the disadvantage
19 of the former client except as these Rules would permit or require
20 with respect to a client, or when the information has become
21 generally known; or
22 (2) Reveal information relating to the representation except as these
23 Rules would permit or require with respect to a client.

24 Nevada Rules of Professional Conduct (“NRPC”) 1.9 (emphasis added). *See also* NRPC
25 8.3(a)(dictating “A lawyer who knows that another lawyer has committed a violation of the Rules of
26 Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or
27 fitness as a lawyer in other respects, **shall** inform the appropriate professional authority”). THC NV
28 and HERBAL CHOICE do not assert these allegations lightly, but unfortunately, now that a fully
executed (attempted) Partial Agreement has been disclosed, the language is unambiguous and leaves

1 no doubt that there is a direct conflict between the remaining ETW Plaintiffs and the former ETW
2 Plaintiffs, THC NV and HERBAL CHOICE, that has been perpetrated by counsel, Brownstein Hyatt.

3 *Not only* does Section 13 give rise to this violation of NRPC 1.9, Section 7 - “Dissolution of
4 Bond and Injunction” further provides that:

5
6 As a condition and term of this settlement, **DOT will notify the Court and will**
7 **file an appropriate Motion on OST in the Lawsuit** informing the Court that it
8 has determined that Lone Mountain, NOR, GreenMart, and Helping Hands (each a
9 “Tier 3 Party”) **have satisfied the DOT that each such Settling Defendant**
10 **provided the information necessary in their respective applications to allow**
11 **the DOT and/or CCB to conduct all necessary background checks and related**
12 **actions and that Lone Mountain, NOR, GreenMart, and Healing Hands are**
13 **being reassigned to Tier 2 status in the Lawsuit for purposes of the Preliminary**
14 **Injunction** or any other injunction that may be issued in the Lawsuit or any related
15 proceedings.

16 The Motion to be filed by DOT will indicate the DOT’s approvals of the
17 applications of the previously designated Tier 3 Defendant Intervenors and that
18 final inspections may be completed for any establishments owned by Lone
19 Mountain, NOR, GreenMart, and Helping Hands. **All Parties will join in the**
20 **DOT’s Motion . . .**

21 *Id.* at Section 7.

22 Again, this is bewildering that this term is set forth in the Parties Settlement Agreement given
23 NRCP 1.9 discussed above; *but possibly even more disturbing is the collusion with the Department*
24 *of Taxation (“DOT”) to try and moot this Court’s preliminary injunction*, which enjoined the State
25 “from conducting a final inspection of any of the conditional licenses issued in or about December
26 2018 who did not provide the identification of each prospective owner, officer and board member as
27 required by NRS 453D.20060 pending a trial on the merits.” *See* August 23, 2019 Findings of Fact
28 and Conclusions of Law Granting Preliminary Injunction, p. 24, lines 4-7 on file herein.

It is apparent that the DOT believes it retains the ultimate authority to circumvent the law and
this Court’s findings with regard to complying with the background check for its applicants because
the Settling Parties have manipulated away the problem (i.e., by redistributing the enjoined licenses

1 from unapproved applicants to allegedly approved applicants). But this bait and switch maneuver
2 (which is a “material term” to the Partial Settlement Agreement) is fundamentally flawed. **The**
3 **enjoined applicants do not have approved/valid licenses to redistribute.** *Id.* These licenses do
4 not become magically “approved” by trading them to an applicant who did undergo the background
5 check. This is akin to circulating Confederate currency – it is no good here, no matter whom you
6 trade it to.
7

8 As such, the enjoined parties have nothing of value to offer by way of consideration in this
9 Partial Settlement Agreement because the Court has already found that the DOT violated the Nevada
10 Constitution; constituted an abuse of discretion; and acted arbitrary and capriciously with regard to
11 failing to implement the necessary background checks on applicants. *Id.* at paragraph 46. Thus, those
12 licenses are invalid as they exist today and cannot be arbitrarily “cured” by putting them under another
13 company’s name who did get background checked. This audacity of the Settling Parties to think they
14 are above this Court’s findings and can effectively “work around” the matter simply provides another
15 basis to enjoin any purported attempt to fulfill or execute this Partial Settlement Agreement.
16
17

18 **B. The Department of Tax Cannot Bind The Cannabis Compliance Board to the Partial**
19 **Settlement As So Stated Within the Settlement Agreement**

20 The DOT is the Defendant in this case – not the Cannabis Compliance Board. These are two
21 separate administrative agencies with no apparent authority to bind each other. It is significant to note
22 that the **DOT is not the CCB’s predecessor administrative body**. The CCB, is an independent body
23 from the DOT, has a whole new board established to operate on July 1, 2020, with a whole new set
24
25
26
27
28

1 of regulations, to wit: Chapter 678A of the Nevada Revised Statutes, in effect since July 1, 2020.³

2 Moreover, the current Board Members including the Chair have no prior service with the DOT.⁴

3 As such, the CCB cannot – and should – not be a party to any settlement agreement brought
4 before this Court for final approval. However, the DOT certainly makes provisions, promises and
5 commitments on behalf of the CCB in the Partial Settlement Agreement which are highly suspect⁵ –
6 and begs the question, on what authority or right does the DOT have to bind the CCB? *See* Section
7 22 providing “The State of Nevada, DOT represent and warrants that it has authority to sign this
8 Agreement and bind the CCB (who notably is **not** a party to the Partial Settlement Agreement”). The
9 CCB was implemented as an independent and stand-alone agency by Governor Sisolak with the
10 following mindset in place:
11

12
13 **“Our marijuana industry is now a key part of our state economy, and
14 to make sure it stays that way, we must hold it to the highest standard
15 while empowering the industry to continue thriving,” Governor Sisolak
16 said. “Nevada’s first-ever Cannabis Compliance Board will ensure this
17 critical part of our state’s economy is positioned to become the gold
18 standard for the nation.”**

19 *See* June 12, 2019 DOT Announcement “Governor Sisolak Signs Bill Creating Cannabis Compliance
20 Board” attached hereto as Exhibit “2” (emphasis added). “Establishing the CCB is part of Governor
21 Sisolak’s multi-pronged approach to reforming and strengthening Nevada’s legal cannabis industry .
22 . . .” *Id.*

23 The commitments made on behalf of the DOT in the Partial Settlement Agreement are so
24 extensive and numerous, yet does the **CCB even know** the extent to which the DOT purported to bind
25

26 ³ The Cannabis Compliance Board is currently comprised of the following three individuals. 1) Chairman Hon. Michael Douglas; 2) Jerrie E. Merritt; and 3) Dennis K. Neilander Esq.

27 ⁴ *See* CCB Board Member Profiles at ccb.nv.gov

28 ⁵ In fact, the CCB is listed approximately **thirty-eight (38)** times in the Partial Settlement Agreement.

1 its sister agency? For instance, in Section 2 “the DOT and/or CCB agrees to issue a conditional
2 Henderson license to LivFree . . .”. On what authority does the DOT have to bind the CCB? The
3 CCB is the Governor’s specially crafted solution to the disastrous application of law under the DOT
4 in a new and revitalize attempt to ensure integrity, transparency and ethics are maintained in the
5 cannabis sector. Why would the DOT believe it can now act and just cram down the CCB’s throat
6 whatever pathetic attempt it makes to now reshuffle the deck on this gross misdeal of licenses?
7

8 More specifically, the CCB maintains the following “Guiding Principles” as listed on its
9 website (among others):

- 10 • The Nevada Cannabis Compliance Board will govern Nevada's
11 cannabis industry through strict regulation of all persons, locations,
12 practices, associations, testing and related activities.
- 13 • Through our investigative and equitable licensing practices, we will
14 hold cannabis licensees to high ethical standards and ensure that
15 only suitable licensees can participate.
- 16 • We will operate with the highest levels of integrity and avoid any
17 personal or professional conflicts that may erode public confidence
18 and trust.

19 <https://ccb.nv.gov/meet-the-cannabis-compliance-board-ccb/#item-1>

20 How is the CCB operating at the highest level of integrity and trust and promoting public confidence
21 and trust, when nowhere in the Partial Settlement Agreement is the CCB listed as a signatory? *See*
22 Exhibit “1”.

23 To the extent that Ms. Melanie Young, Director of the DOT, executed this Partial Settlement
24 Agreement on July 28, 2020, it begs the question for Ms. Young to explain on what authority she can
25 bind the CCB? There is notably no provision in law or regulations relied on or referenced to support
26 such assertion. Moreover, what is the purpose of separate regulatory agencies if they can all act for
27 and/or on behalf of each other? *See also* Sections 6, 15 and of the Partial Settlement Agreement (in
28

1 which the CCB is agreeing to do such things as “make a good faith effort to expedite and process
2 GreenMart’s previously submitted Change of Ownership request for transfer of interests and/or
3 ownership” or “agrees to recommend an industry funded study to the Cannabis Advisory
4 Commission” to gather information on certain various topics)

5 Ms. Young should attest under oath that the CCB approved her signature, binding them to these
6 numerous and onerous terms. Without sufficient explanation on what authority the DOT has to bind
7 the CCB, let alone take this matter before the Nevada Tax Commission and not the CCB, the Partial
8 Settlement Agreement must be presumed to be unenforceable as the DOT is making commitments for
9 an entity that is not a party to the agreement (several of which are significant and regard approval of
10 transfers of ownership and preferential timing to the same among other license holders who have been
11 backlogged for over a year). As such, THC NV and HERBAL CHOICE respectfully implore this
12 Court to insist on transparency and explanation before rushing to jam this Partial Settlement through
13 – this is exactly how the DOT got to this trial in the first place, by NOT following the law and NOT
14 following appropriate procedure. A repeated result should be avoided at all costs.

15
16
17
18 **C. The Settlement Agreement is Riddled with Irrelevant and Expired Authority**
19 **Which Settling Parties are Relying On. It is Incumbent on this Court to Follow**
20 **the Current Law on this Matter.**

21 Settling Parties have presented the Settlement Agreement purporting to be authorized to settle
22 this matter under NRS 453D as they fail to provide the authority for which they do so.

23 The Preamble of this Agreement provides that **State of Nevada, Department of Taxation**
24 **(“DOT”)** (collectively “Settling Defendants” or individually, a “Settling Defendant”). As stated
25 *supra*, the DOT has no authority after July 1, 2020 to transfer licenses, to revoke licenses or penalize
26 license holders. In fact, the only authority that the DOT has, by and through the Tax Commission is
27 delineated in NRS 678A.480, entitled Audits of Licenses; standards for audits, annual report.
28

1 In fact, NRS 678A.480 provides that the DOT, through the Tax Commissions duties and
2 obligations exist only in the realm of financial auditing licensees, etc. as follows:

3 **NRS 678A.480 Audits of licensees; standards for audits; annual report.**
4 **[Effective July 1, 2020.]**

5 1. As often as the Board deems necessary, the Board shall conduct a financial or
6 operational audit of the accounts, funds, programs, activities and functions of all
7 licensees. As often as the Department deems necessary, the Department of Taxation
8 shall conduct a tax audit of all licensees.

9 2. A licensee shall make available to the Board or Department of Taxation, as
10 applicable, all books, accounts, claims, reports, vouchers and other records requested
11 by the Board or Department in connection with an audit conducted pursuant to
12 subsection 1.

13 3. If a licensee refuses to produce any of the records described in subsection 2, the
14 Board or Department of Taxation, as applicable, may petition the district court to order
15 the licensee to produce the requested records. The court shall order the production of
16 all such records upon a finding that the requested records are within the scope of the
17 audit.

18 4. If any audit report of the accounts, funds, programs, activities and functions of a
19 licensee contains adverse or critical audit results, the Board or Department of Taxation,
20 as applicable, may require the licensee subject to the audit to respond, in writing, to the
21 results of the audit. A licensee shall provide such response to the Board or Department
22 not more than 15 days after receiving a request from the Board or Department.

23 5. On or before April 1 of each year, the Board and the Department of Taxation shall
24 submit to the Director of the Legislative Counsel Bureau a report concerning the audits
25 conducted pursuant to this section for the preceding year. The report must include,
26 without limitation:

- 27 (a) The number of audits performed pursuant to this section in the preceding year;
- 28 (b) A summary of the findings of the audits; and
- (c) The cost of each audit.

(Added to NRS by 2019, 3783, effective July 1, 2020)

21 As stated *supra*, in Paragraph 22 of the Settlement Agreement, the DOT has presented that it
22 has authority to settle this matter on behalf of the CCB. The DOT has failed to provide this Court with
23 proof that they have the authority to bind another administrative agency in this Agreement. It is clear
24 that they lost any such purported authority from NRS 453D as it expired and now the controlling
25 mandate lies in Chapter 678A.

26 The following Paragraphs binding the CCB should be supported by a signatory from the CCB,
27 not the Executive Director of the DOT, the are separate administrative agencies which operate for
28 different purposes after July 1, 2020.

1
2 13. As a condition and term of this settlement, the CCB agrees to make a good faith
3 effort to expedite and process:

4 22. In the event that the DOT is no longer responsible for performing any of the
5 conditions and/or requirements in this Agreement, then the entity that is
6 responsible for performing such duties (e.g., the CCB or any related entity) shall
7 be subject to the conditions and requirements provided in this Agreement. The
8 State of Nevada, DOT represents and warrants that it has authority to sign this
9 Agreement and bind the CCB.

10 Further, Paragraphs 25-28, all provide at the end of the averments the following language
11 “Nothing contained herein shall limit, waive, or revoke the DOT’s or CCB’s rights, powers, or duties
12 under Nevada Administrative Code 453D.312.” All Parties to this action know, quite well, that NAC
13 and NRS 453D.312’s references to NRS Chapter 453D are meaningless at the time of the signature
14 of this Agreement on July 29, 2020.

15 **NAC 453D.178 Investigative authority of Department relating to violations of**
16 **chapter, enforcement and adoption of regulations and recommending**
17 **legislation. (NRS 453D.200)** The Department will make appropriate investigations:
18 1. To determine whether there has been any violation of this chapter or chapter
19 453D of NRS.
20 2. To determine any facts, conditions, practices or matters which it may deem
21 necessary or proper to aid in the enforcement of any such law or regulation.
22 3. To aid in adopting regulations.
23 4. To secure information as a basis for recommending legislation relating to chapter
24 453D of NRS.
25 (Added to NAC by Dep’t of Taxation by R092-17, eff. 2-27-2018)

26 In fact, the NAC 453D.312 which cites to NRS 453D.200, again cites to an expired act for
27 absolving the DOT or the CCB of their rights to deny the licenses. It is significant to note that the
28 Nevada Administrative Code Chapter 453, entitled Regulation and Taxation of Marijuana has not
been revised since January, 2019.⁶

⁶ <https://www.leg.state.nv.us/NAC/Chapters.html>

NAC 453D.312 Grounds for denial of issuance or renewal of license; grounds for revocation of license; notice; opportunity to correct situation. (NRS 453D.200)

1
2 1. The Department will deny an application for the issuance or renewal of a license for a marijuana establishment if:

3 (a) The application or the marijuana establishment is not in compliance with any
4 provision of this chapter or chapter 453D of NRS; or

5 (b) An owner, officer or board member of the marijuana establishment:

6 (1) Is an employee or contractor of the Department;

7 (2) Has an ownership or financial investment interest in a marijuana testing facility
8 and also is an owner, officer or board member of a marijuana cultivation facility,
9 marijuana distributor, marijuana product manufacturing facility or retail marijuana
10 store; or

11 (3) Provides false or misleading information to the Department.

12 2. The Department may revoke a license for a marijuana establishment if:

13 (a) The marijuana establishment engages in a category I violation pursuant to NAC
14 453D.905;

15 (b) An owner, officer or board member of the marijuana establishment has been
16 convicted of an excluded felony offense; or

17 (c) The Department receives formal notice from the applicable locality that the
18 marijuana establishment has had its authorization to operate terminated.

19 3. The Department may deny an application for the issuance or renewal of a license
20 for a marijuana establishment or may suspend or revoke any license issued under the
21 provisions of this chapter and chapter 453D of NRS upon any of the following grounds:

22 (a) Violation by the applicant or the marijuana establishment of any of the provisions
23 of this chapter or chapter 453D of NRS.

24 (b) The failure or refusal of an applicant or marijuana establishment to comply with
25 any of the provisions of this chapter or chapter 453D of NRS.

26 (c) The failure or refusal of a marijuana establishment to carry out the policies and
27 procedures or comply with the statements provided to the Department in the application
28 of the marijuana establishment.

(d) Operating a marijuana establishment without a license.

(e) The failure or refusal to return an adequate plan of correction to the Department
within 10 days after receipt of a statement of deficiencies pursuant to NAC 453D.308.

(f) The failure or refusal to correct any deficiency specified by the Department within
the period specified in a plan of correction developed pursuant to NAC 453D.308.

(g) The failure or refusal to cooperate fully with an investigation or inspection by the
Department or its agent.

(h) The failure to comply with the provisions of chapters 372A and 453D of NRS
and chapter 372A of NAC governing the imposition of an excise tax on marijuana
establishments.

4. If the Department denies an application for issuance or renewal of a license for a
marijuana establishment or revokes such a license, the Department will provide notice
to the applicant or marijuana establishment that includes, without limitation, the
specific reasons for the denial or revocation.

5. Before denying an application for issuance or renewal of a license for a marijuana
establishment or revoking such a license as a result of the actions of an owner, officer

1 or board member of the marijuana establishment pursuant to paragraph (b) of
2 subsection 1 or paragraph (b) of subsection 2, the Department may provide the
3 marijuana establishment with an opportunity to correct the situation.

4 6. The Department will not deny an application to renew a license for a marijuana
5 establishment or revoke a license based on a change in ownership of the marijuana
6 establishment if the marijuana establishment is in compliance with the provisions of
7 this chapter and chapter 453D of NRS.

8 (Added to NAC by Dep't of Taxation by R092-17, eff. 2-27-2018)

9 The following Paragraph, not only binds the CCB to an Agreement in a litigation they were
10 not involved in, it also may create a fiscal responsibility on the CCB, which there is no evidence that
11 they are even aware of. There is no definition of what "industry funded study" is, which may or may
12 not include the CCB as part of the "industry".

13 30. The CCB agrees to recommend an industry funded study to the Cannabis
14 Advisory Commission, a duly authorized public body pursuant to NRS 678A.300 and
15 NRS 678A.310, to gather information and make recommendations to the CCB on the
16 following matters: (1) what are reasonable additional actions, if any, can be taken to
17 deter black-market sales; (2) analysis of adequacy of number and commercial need
18 for additional marijuana licenses, if any, to serve the citizens of Nevada, including
19 consideration of minority access to licensure, (3) recommendations of changes, if any,
20 relating to state and local fees and taxation of the marijuana industry, and (4) analysis
21 of adequacy of safeguards to protect minors.

22 The Settling Parties do not provide any authority which the DOT can bind the CCB without
23 specifically delineated authority presented to this Court? Notwithstanding same, the Settling Parties
24 have failed to assure this Court that this particular settlement agreement does not violate the provisions
25 of NRS Chapter 678. What due diligence has been conducted by the Parties to provide this Court with
26 adequate assurances that this Partial Settlement Agreement does not violate the very purpose this
27 matter is being litigated under the statutory mandates? None - because no good faith settlement
28 motion has been made to offer this Court and other interested parties a full and fair opportunity to
weigh into this complex and intensely litigated matter. Rather, the Settling Parties want to quickly

1 try and backdoor the Court by obtaining faux approval from an improper agency to try and feign
2 legitimacy after the fact. Again, if the Partial Settlement Agreement still violates the provisions of
3 NRS Chapter 678, The DOT or the Tax Commission still has no authority to review these matters and
4 all powers to do so have been transferred to the CCB.

5 Interestingly, Paragraph 3 of the Agreement provides “No license transfer pursuant to this
6 Agreement can create a monopoly, as prohibited in NRS 678B.230 and NRS 678B.270.
7

8 **NRS 678B.270 Licensing of adult-use cannabis establishments in larger**
9 **counties: Limitation on number of licenses issued to any one person. [Effective**
10 **July 1, 2020.]** Except as otherwise provided in subsection 2, to prevent monopolistic
11 practices, the Board shall ensure, in a county whose population is 100,000 or more, that
12 it does not issue, to any one person, group of persons or entity, the greater of:

- 13 1. One adult-use cannabis establishment license; or
- 14 2. More than 10 percent of the adult-use cannabis establishment licenses otherwise
15 allocable in the county.

16 What due diligence has been engaged in to assure that the Agreement is not violated *ab initio*,
17 prior to even entry? Moreover, what remedial measures have the Settling Parties set up to rectify such
18 a violation of the Agreement? Further, the entire interwoven and multifarious structure of the
19 Agreement begs the question, has the CCB been made aware of the terms of this attempted Partial
20 Settlement Agreement and the extent to which they have been obligated?

21 **D. The DOT and Joining Parties Are Misguided on the Law on Good Faith** 22 **Settlements**

23 The parties to the Partial Settlement Agreement assert that THC NV and Herbal Choice are
24 confused on the applicable law regarding the abilities to obtain approval of a settlement and assert that
25 there is no standard for the Court to consider in addressing a dismissal predicated on the same. *See*
26 *Oppositions to TRO Application, generally*. However, the Settling Parties fail to appreciate that a
27 stipulation and dismissal can only occur by court order ON TERMS THE COURT CONSIDERS
28

1 PROPER. NRCPC 41(a)(2). Thus, the Court absolutely needs to consider the terms of the dismissal,
2 especially given the foregoing numerous concerns raised herein. In considering the terms of the
3 forthcoming request to dismiss, the Court should absolutely consider the same good faith factors that
4 include, amongst other things, **and the existence of collusion, fraud or tortious conduct aimed to**
5 **injure the interests of non-settling defendants.** In *In re MGM Grand Hotel Fire Litigation*.⁷
6

7 Moreover, in *Velsicol Chemical v. Davidson*⁸, the Supreme Court held that the determination
8 of a good-faith settlement “should be left to the discretion of the trial court based upon all relevant
9 facts available, and that, in the absence of an abuse of that discretion, the trial court's findings should
10 not be disturbed.” This Court has the discretion of holding a Good Faith Hearing on the resolution
11 and it absolutely should taking in to consideration, the totality of circumstances on record herein.
12

13 The fact that the DOT and joining parties believe that the settlement agreement does not
14 mandate a good faith hearing is baffling given that Paragraph 13 of the Agreement provides that the
15 Settling Parties will be filing a Motion to Intervene on behalf of Defendants. This provision, does not,
16 according to them rise to the level of bad faith, albeit the violation of SCR 1.9, 1.16⁹ and 8.4.¹⁰
17

18 _____
⁷ 570 F. Supp. 913, 927 (D. Nev.1983).

19 ⁸ 107 Nev. 356, 360, 811 P.2d 561, 563 (1991).

20 ⁹ SCR 1.16. Declining or Terminating Representation.

21 (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably
22 practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time
23 for employment of other counsel, surrendering papers and property to which the client is entitled and
24 refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer
25 may retain papers relating to the client to the extent permitted by other law. [Emphasis added].

26 ¹⁰ SCR Rule 8.4. Misconduct. It is professional misconduct for a lawyer to:

27 (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce
28 another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or
fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a government agency or official or to achieve
results by means that violate the Rules of Professional Conduct or other law; or

1 Paragraph 13 alone is sufficient evidence, on an isolated basis, to elicit a determination of good
2 faith settlement, notwithstanding the settling Parties' attempt to "crash the bond" and have the
3 preliminary injunction dissolved, which seemingly, is an adverse position to all Plaintiffs in this
4 matter. However, according to their similar Oppositions, Defendants, don't believe any of this is
5 sufficient for this Court to hold a good faith settlement hearing, and THC NV and HERBAL CHOICE
6 are doing this to "kill the partial settlement agreement".¹¹
7

8 Finally, the DOT and joining Parties believe that NRS 17.245 apply only to wrongful death or
9 other injuries. Their restrictive understanding of the statutory provision is axiomatic.

10 NRS 17.245 provides:

11
12 1. When a release or a covenant not to sue or not to enforce judgment is given
13 in good faith to one of **two or more persons liable in tort for the same**
14 **injury** . . .

15 (a) It does not discharge any of the other tortfeasors from liability for the
16 injury . . . unless its terms so provide, but it reduces the claim against the
17 others to the extent of any amount stipulated by the release or the covenant,
18 or in the amount of the consideration paid for it, whichever is the greater;
19 and

20 (b) It discharges the tortfeasor to whom it is given from all liability for
21 contribution and for equitable indemnity to any other tortfeasor.

22 (Emphasis added).

23 The Second Restatement of Torts defines a Tort as "an act or omission that gives rise to an
24 injury or harm to another and amounts to a civil wrong for which the courts impose liability. In the
25 context of torts, "injury" describes the invasion of any legal rights; whereas "harm" a loss or a

26 (f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of
27 judicial conduct or other law.

28 ¹¹ See MM Development and LivFree Wellness Opposition pg 9 Ins. 1-5.

1 detriment in fact that an individual suffers.” *See* Restatement of Torts §7. Here, the Plaintiffs initiated
2 suit because of injury and harm that the DOT imposed in the woefully inadequate and flawed
3 dispensary application process. As set forth above, this Court must consider any dismissal of the
4 Settling Plaintiffs’ claims on terms the Court considers proper, to which the Court is afforded broad
5 discretion. NRC 41(a)(2); *Velsicol Chemical v. Davidson*.

6
7 **E. Intervenor Refused to Negotiate with Herbal Choice Following the Arrest of a
8 Former Member of the Corporation**

9 On or about May 1, 2020, Norberto Madrigal, a former Corporate agent of Herbal Choice was
10 arrested following with the arrest of an LVMPD Officer Jesus Najera, under suspicion of drug
11 trafficking. Mr. Madrigal was released on his own recognizance on May 14, 2020 and has no prior
12 criminal history.

13 Notwithstanding said facts as stated above, compounded by the fact Counsel for Helping
14 Hands was notified that Mr. Madrigal was no longer involved with Herbal Choice, counsel for Helping
15 Hands and apparently, remaining intervenors, refused to entertain any possibility of settlement with
16 Herbal Choice, disingenuously, regardless of the timing of whether undersigned Counsel reached out
17 to Mr. Kahn. *See* Email exchange attached hereto as Exhibit “3”.

18
19 In fact, Counsel offered to provide Mr. Kahn with documentation demonstrating that Mr.
20 Madrigal was no longer a member of the corporate entity or had any involvement with same, but said
21 offer was ignored. *Id.*

22
23 Helping Hands’ Joinder regarding the timing of when Herbal Choice approached to discuss
24 being included in the negotiations is irrelevant, since for all intents and purposes, Herbal Choice was
25 marked to be left out of the negotiations when Madrigal was arrested in May 1, 2020. At said time,
26 Herbal Choice was still represented by Brownstein Hyatt. Counsel herein only substituted into the
27 case on or about May 21, 2020. The end result is the same now as it was then. Herbal Choice is not
28

EXHIBIT “1”

EXHIBIT “1”

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of July ___, 2020 (the “Effective Date”) (this “Agreement”), among LivFree Wellness, LLC, a Nevada limited liability company (“LivFree”), MM Development Company, Inc., a Nevada corporation, (“MM”); ETW Management Group LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real Estate, Inc., and Zion Gardens LLC, (collectively the “ETW Plaintiffs”); Nevada Wellness Center, LLC, a Nevada limited liability company (“NWC”); Qualcan, LLC, a Nevada limited liability company (“Qualcan”) (collectively, “Settling Plaintiffs” or individually, a “Settling Plaintiff”); Lone Mountain Partners, LLC, a Nevada limited liability company (“Lone Mountain”); Nevada Organic Remedies, LLC, a Nevada limited liability company (“NOR”); Greenmart of Nevada NLV, LLC, a Nevada limited liability company (“GreenMart”); Helping Hands Wellness Center, Inc., a Nevada corporation (“Helping Hands”); CPCM Holdings, LLC, a Nevada limited liability company, Cheyenne Medical, LLC, a Nevada limited liability company, and Commerce Park Medical, LLC, a Nevada limited liability company (collectively “Thrive”); and the State of Nevada, Department of Taxation (“DOT”) (collectively “Settling Defendants” or individually, a “Settling Defendant”).

RECITALS

- A. LivFree, MM, ETW Plaintiffs, NWC, Qualcan, Lone Mountain, NOR, GreenMart, Helping Hands, Thrive, and the DOT (collectively the “Settling Parties” and individually, a “Settling Party”) are all parties to a consolidated lawsuit pending in the District Court, Clark County, Nevada, as Case No. A-19-787004-B (the “Lawsuit”).
- B. Within the Lawsuit there are claims and counterclaims relating to the disputes at issue in the Lawsuit (the “Disputes”).
- C. The parties want to compromise and settle the Disputes in the Lawsuit by dismissing the claims in the Lawsuit by and between the Settling Parties, each Settling Party to bear its own costs and attorneys’ fees, and to exchange mutual releases as provided in this Agreement.

NOW THEREFORE the Settling Parties agree:

DESCRIPTION OF TRANSFERS AND ISSUANCES OF LICENSES

1. The Settling Defendants hereby assign (subject to DOT and/or Cannabis Compliance Board (“CCB”) approval) all rights, interest and title in the various Nevada retail marijuana dispensary conditional licenses (the “Conditionally Approved Licenses”) to other entities as set forth below provided that each of the conditions set forth in this Agreement, including those set forth in Paragraphs 5-8 hereof, shall first be fulfilled:

- Lone Mountain hereby assigns 1 City of Las Vegas conditional license to Qualcan;
- Lone Mountain hereby assigns 1 Washoe County – City of Reno conditional license, 1 Lincoln County conditional license, 1 Esmerelda conditional license, and 1 Eureka County conditional license to ETW Plaintiffs;

- Helping Hands hereby assigns 1 Unincorporated Clark County conditional license to LivFree;
- NOR hereby assigns 1 Unincorporated Clark County conditional license to MM;
- NOR hereby assigns 1 Carson City conditional license to Qualcan;
- GreenMart hereby assigns 1 Unincorporated Clark County conditional license to NWC;
- Thrive hereby assigns 1 Clark County – City of Henderson conditional license (RD266) to ETW Management or a related-entity designee; and
- Lone Mountain hereby assigns 1 Douglas County conditional license to Thrive¹.

2. LivFree Henderson. To fully resolve the potential MM and LivFree appeals, the DOT and/or CCB agrees to issue a conditional Henderson license to LivFree and LivFree agrees that it will hold such license in abeyance (the “Limited Henderson License”) until such time as both of the following two conditions are satisfied and provided that no Settling Party has exercised the “put option” described below: (1) the Henderson moratorium and/or restriction on the opening of additional adult-use cannabis establishments (the “Henderson Moratorium”) is lifted; AND (2) the issuance of a final inspection certificate for this Henderson license does not require the DOT and/or CCB to exceed the current cap for Clark County licenses (presently 80 licenses) or any adjusted cap for Clark County licenses. Nothing herein shall be construed to excuse or eliminate any and all requirements or duties that LivFree is or maybe required to fulfill under state or local law pertaining to the Henderson conditional license in the event that conditions precedent 1 and 2 are fulfilled. Nothing in this Paragraph 2 shall prevent any Settling Parties issued conditional licenses in the City of Henderson from perfecting those conditional licenses if the Henderson Moratorium is lifted.

LivFree expressly does not commit to undertake any efforts to eliminate the existing Henderson Moratorium and, in fact, expressly reserves the right to undertake lobbying efforts to preserve any Henderson Moratorium, provided, however, that LivFree shall not seek any legal action to prevent the Henderson Moratorium from being lifted or seeking its continuance. Further, LivFree shall not engage in any tortious interference with any Settling Parties’ ability to perfect any Henderson license and/or to receive the issuance of a final inspection certificate from both the City of Henderson and the State of Nevada (CCB). LivFree agrees that the existing Henderson Moratorium applies to the Henderson conditional license issued to LivFree hereunder (but does not apply to LivFree’s existing operational Henderson dispensary license). To assist the DOT and/or CCB in reducing any potential issues with the current cap for Clark County licenses, LivFree agrees that, for a period of 5 years (the “Option Period”) following execution of this Agreement, it will pay \$250,000, or any other price on which the parties are able to agree, to purchase one Henderson conditional licenses. No such Settling Defendant shall have any obligation whatsoever to sell LivFree any such Henderson conditional licenses and nothing in this Agreement should be construed as any indication that the DOT and/or CCB is suggesting that any Settling Defendant should exercise this “put option.” However, LivFree agrees that any Settling Defendant, at their respective option (not obligation) and in their sole and unfettered discretion,

¹ Lone Mountain agrees that, subject to agreement to final terms by all parties to the Lawsuit, it will contribute its remaining Lander County, Mineral County, and White Pine County conditional licenses to a Global Settlement.

shall have a “put option” to sell to LivFree, and LivFree shall have the obligation to purchase, one such license from any Settling Defendant, whichever decides to exercise the option first (if at all), for \$250,000, or any other price on which the parties are able to agree, during the Option Period.

Nothing in this Paragraph 2 shall be construed to (a) prevent or limit any Settling Defendant’s ability to operate the conditional Henderson licenses during the Option Period, (b) prevent or limit any Settling Defendant’s ability to sell, assign, or otherwise transfer any Henderson conditional licenses during the Option Period to any other party at any time and upon any such terms as such Settling Defendant may agree, and (c) apply to any other licenses held by any affiliate of any Settling Defendant. Further, LivFree and DOT and/or CCB agree that the grant of any “put option” pursuant to this Paragraph 2 shall not constitute the creation of an “interest” (ownership or otherwise) in the Henderson conditional licenses for LivFree.

If LivFree acquires one of the conditional licenses through the exercise of the “put option”, LivFree agrees that it will surrender either the Limited Henderson License or the license acquired through the “put option” (at LivFree’s discretion to determine which of those options it will choose) to allow the DOT and/or CCB to reduce the existing or any future cap on total Clark County licenses. In no event shall LivFree have two additional Henderson conditional licenses by getting one directly or indirectly through this settlement (or any further settlement of the Lawsuit) and another through an exercise of the “put option”, in addition to the already existing LivFree Henderson license.

In the event that the pre-condition of lifting the Henderson moratorium occurs and LivFree is not able to exercise in good faith the “put option”, LivFree agrees to remain solely responsible for any and all local government and county approvals necessary for the CCB to reallocate a license which was not applied for during the September 2018 retail marijuana store competition.

3. All licensees described in this Agreement must be in good standing.
4. No license transfer pursuant to this Agreement can create a monopoly, as prohibited in NRS 678B.230 and NRS 678B.270.

DISSOLUTION OF BOND AND INJUNCTION

5. As a condition and term of this settlement, within 2 business days of the execution of this Agreement by all Parties, Settling Plaintiffs shall file a motion for a return of the cash bond that they have posted and seek an order shortening time. Contemporaneously, Settling Plaintiffs will withdraw the pending Motion for Case Terminating Sanctions filed against the DOT seeking to strike its Answer to the Lawsuit.

6. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process GreenMart’s previously submitted Change of Ownership request for transfer of interests and/or ownership (“CHOW”).

7. As a condition and term of this settlement, DOT will notify the Court and will file an appropriate Motion on OST in the Lawsuit informing the Court that it has determined that Lone Mountain, NOR, GreenMart, and Helping Hands (each, a “Tier 3 Party”) have satisfied the DOT that each such Settling Defendant provided the information necessary in their respective applications to allow the DOT and/or CCB to conduct all necessary background checks and related actions and that Lone Mountain, NOR, GreenMart, and Helping Hands are being reassigned to Tier 2 status in the Lawsuit for purposes of the Preliminary Injunction or any other injunction that may be issued in the Lawsuit or any related proceedings. The Motion to be filed by DOT will

indicate the DOT's approval of the applications of the previously designated Tier 3 Defendant Intervenor and that final inspections may be completed for any establishments owned by Lone Mountain, NOR, GreenMart, and Helping Hands. All Parties will join in the DOT's Motion. The reassignment of the settling Tier 3 parties into Tier 2, is a material condition of this Agreement and a material condition and requirement for the assignments contained in Paragraph 1. In the event that a Tier 3 Party is prevented or precluded reassignment to Tier 2 or otherwise remains enjoined from perfecting its conditional licenses for any reason, whether by a court, another party to the Lawsuit, any third party, or otherwise, the assignments of conditional licenses identified in Paragraph 1 shall be void and of no effect, with title to the licenses identified in Paragraph 1 to remain with the transferring party and this Agreement shall be terminated without any further force or effect. In such instance, the DOT and/or CCB (or successor entity, as appropriate) and the proposed assignee shall perform all actions and execute all documents to ensure that such licenses remain with the affected transferring party.

TIMING OF TRANSFERS

8. As a condition and term of this settlement, after the conditions precedent in Paragraphs 5-7 are met, the CCB agrees to make a good faith effort to expedite any and all CHOW requests for the transfer of licenses from existing licensee to another existing licensee as set forth in Paragraph 1 above. The CCB agrees that it will make a good faith effort to expedite and process all CHOWs after submission thereof. For purposes of approving the transfers, LivFree, MM, ETW Plaintiffs, NWC, Qualcan, and Thrive were previously and are currently approved by the DOT as owners and operators of medical and retail marijuana dispensary licenses in the state of Nevada. In compliance with NRS/NAC 453D, these parties have operated retail marijuana dispensaries without any suspensions or revocations of those licenses. Any delays in approvals of the CHOWs due to no fault of transferor shall not be deemed a breach of this Agreement.

RELEASES AND DISMISSALS

9. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 5-8 are met, the parties will execute mutual releases in the form attached hereto as Exhibit B, with each party to bear its own costs and attorneys' fees.

10. As a condition and term of this settlement, within two business days after the conditions precedent in Paragraphs 5-8 are met, Settling Plaintiffs shall move to dismiss any and all claims in the cases listed below (the "Dismissed Claims"):

- a. MM Development/LivFree action (Case No. A-18-785818-W);²
- b. In Re: DOT Litigation (A-19-787004-B);
- c. Nevada Wellness Center action (A-19-787540-W);³
- d. Qualcan action (A-19-801416-B).

Settling Plaintiffs will dismiss the Dismissed Claims with prejudice against each Settling Party hereto, as applicable, and without costs or fees to or from any such Settling Party, Settling

² However, MM will not dismiss its counterclaims against D.H. Flamingo in the associated cases.

³ NWC's claims against Defendant Jorge Pupo will remain and not be dismissed as a result of this settlement.

Defendants reserve their rights to seek fees and costs from any Non-Settling Plaintiff (as defined below) in the Lawsuit.

11. LivFree/MM agree to stipulate with the DOT to dismiss the pending writ petition regarding the cell phone of Rino Tenorio (Supreme Court Case No. 79825).

12. MM Development, Nevada Wellness Center, and Liv Free agree to relinquish any and all administrative appeals to DOT and CCB which they may have or have arising out of the September 2018 retail marijuana store competition.

CONTINUED PARTICIPATION BY SETTLING PLAINTIFFS

13. Further, upon the execution of this Agreement, the Settling Plaintiffs will file a Motion to Intervene as Defendants/Intervenors in the Lawsuit and participate in the Lawsuit in good faith and shall use best efforts to defend against the Lawsuit.

14. If any Settling Party settles any other matter related to the Lawsuit (each, a “Future Settlement”), every other Settling Party shall be included as released parties in such Future Settlement on the same release terms and conditions as set forth herein; provided, however, that any Settling Party receiving such release shall bear its own costs and attorneys’ fees with respect thereto as provided in this Agreement.

ADDITIONAL TERMS RELATING TO LICENSES AND TRANSFERS

15. As a condition and term of this settlement, the CCB agrees to make a good faith effort to expedite and process:

- a. a CHOW to be filed by Helping Hands;
- b. any CHOW submitted by NOR with respect to its licenses as the expedited handling of such CHOW requests may be necessary under the pending Companies’ Creditors’ Arrangement Act proceeding involving NOR’s parent company;
- c. a CHOW to be submitted by Lone Mountain; and
- d. any CHOW to be submitted by MM with respect to the transfer of cultivation and production licenses (medical and recreational) from West Coast Development Nevada, LLC.

16. DOT and/or CCB further agrees to perform final inspections on an expedited time period – within 5 business days of the request for inspection – for the new locations for the conditional licenses for the NOR proposed dispensary in Reno, NV and the MM proposed dispensary in Unincorporated Clark County, and any and all of Thrive’s conditional licenses to be designated by Thrive.

17. DOT and/or CCB agrees to, in good faith, expedite the processing of Thrive’s pending Change of Location Request for its Unincorporated Clark County license (RD263).

18. DOT and/or CCB agrees that all parties to this Agreement shall receive a fourteen (14)-month extension of the current deadline of December 5, 2020 to February 5, 2022, for conditional licensees to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses received and that comparable extensions shall be extended to other parties that settle claims in this Lawsuit with the DOT and/or CCB. Notwithstanding the foregoing, for any jurisdiction that currently has a moratorium on new adult-use cannabis establishments (including

but not limited to the City of Henderson, Douglas County, and the City of Reno), DOT and/or CCB agrees to extend the deadline for any Settling Party to obtain final inspections and approval from DOT and/or CCB on any and all conditional licenses in such jurisdiction for a period of fourteen (14) months after the date any moratorium is lifted in such jurisdiction.

19. LivFree agrees to reimburse Helping Hands for its expenses, through January 31, 2020 totaling \$890,000, related to building out the designated location at 8605 S. Eastern Ave., Las Vegas, NV 89123 for the Unincorporated Clark County license. Payment of the \$890,000 by LivFree is contingent upon approval of a special use permit ("SUP") for this location by the Clark County Commission and will be made no later than 10 business days after final approval of the SUP. LivFree will submit the application for the SUP in good faith no later than forty-five (45) days following the Effective Date or 45 days after the conclusion of trial, whichever is later. Helping Hands makes no representations or warranties regarding the SUP for the Eastern location. If Clark County does not approve the SUP for such location on or before March 31, 2021, LivFree may request a SUP at a different location and would not be required to pay Helping Hands \$890,000.

20. LivFree agrees to assume the lease, attached hereto as Exhibit A, for the premises located at 8605 S. Eastern Ave., Las Vegas, NV 89123 upon receipt of an estoppel certificate executed by the landlord. Assumption of the lease by LivFree is contingent upon approval of a SUP for this location by the Clark County Commission and will be made no later than 10 business days after final approval of the SUP. Helping Hands will remain liable for lease payments until LivFree assumes the lease and LivFree will have no liability on the lease if the SUP is not approved.

21. LivFree agrees to pay to Thrive the amount of \$400,000 and Helping Hands agrees to pay to Thrive the amount of \$100,000 upon approval of the transfer of the Thrive conditional license as set forth in paragraph 1 of this Agreement. LivFree and Helping Hands agree to cooperate with Thrive to report the payment set out in this Paragraph in the most tax-advantaged way to Thrive and its affiliates.

REPRESENTATIONS AND WARRANTIES

22. In the event that the DOT is no longer responsible for performing any of the conditions and/or requirements in this Agreement, then the entity that is responsible for performing such duties (e.g., the CCB or any related entity) shall be subject to the conditions and requirements provided in this Agreement. The State of Nevada, DOT represents and warrants that it has authority to sign this Agreement and bind the CCB.

23. Lone Mountain represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes and Lone Mountain shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by the entity claiming an ownership interest in the Lone Mountain conditional licenses being transferred for only up to the time when the license transfer is completed. Lone Mountain is not responsible for securing any ownership transfer approvals from the DOT or CCB for any license Lone Mountain transfers hereunder. The designated assignee of the Lone Mountain conditional license will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction (including any costs incurred by Lone Mountain). Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

24. NOR represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes or any persons claiming to have an interest in the conditional license being transferred and NOR shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any person or entity claiming an ownership interest in any of the NOR conditional licenses. NOR is not responsible for securing any ownership transfer approvals from the DOT or CCB for any license NOR transfers hereunder. The designated plaintiff assignee of any NOR conditional license will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction (including any costs incurred by NOR). NOR represents and warrants that any pending legal proceedings involving its Parent Company in Canada do not affect its ability to transfer the above licenses. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

25. GreenMart represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes and GreenMart shall indemnify, defend and hold the Settling Party to which GreenMart's Clark County license is transferred hereunder (i.e, NWC) harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by the entity claiming an ownership interest in the Greenmart conditional licenses being transferred for only up to the time when the license transfer is completed. GreenMart is not responsible for securing any ownership transfer approvals from the DOT or CCB for any license GreenMart transfers hereunder. The designated plaintiff assignee of the GreenMart conditional license will be responsible for all costs associated with the ownership transfer applications with the state and any local jurisdiction (including any costs incurred by GreenMart). Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

26. Helping Hands represents and warrants that it has full and complete control to assign the conditional licenses it was awarded, that there are no ownership disputes or any persons claiming to have an interest in the conditional license being transferred and Helping Hands shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by any person or entity claiming an ownership interest in any of the Helping Hands conditional licenses. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

27. Thrive represents and warrants that it has full and complete control to assign the conditional license it was awarded, that there are no ownership disputes and Thrive shall indemnify, defend and hold settling parties harmless from any and all costs, damages, fees (including attorneys' fees) or liability claimed by the entity claiming an ownership interest in the Thrive conditional license being transferred for only up to the time when the license transfer is completed. Nothing contained herein shall limit, waive, or revoke the DOT's or CCB's rights, powers, or duties under Nevada Administrative Code 453D.312.

28. Each of the Settling Parties hereto represent and warrant that they have had an adequate opportunity to seek and receive legal advice and counsel from an attorney of their choice regarding the content and effect of this Agreement, have actually received such counsel and advice as they deem prudent to receive in these circumstances, have read this Agreement in its entirety, understand all provisions of this Agreement and their import and effect, and enter into and execute this Agreement freely and voluntarily.

29. Each of the Settling Parties warrant and represent there are no other agreements made between any Settling Plaintiffs and any Settling Defendants involving conditions related to the transfer of any conditional licenses or related to any marijuana consumption lounges in the State of Nevada.

OTHER TERMS

30. The CCB agrees to recommend an industry funded study to the Cannabis Advisory Commission, a duly authorized public body pursuant to NRS 678A.300 and NRS 678A.310, to gather information and make recommendations to the CCB on the following matters: (1) what are reasonable additional actions, if any, can be taken to deter black-market sales; (2) analysis of adequacy of number and commercial need for additional marijuana licenses, if any, to serve the citizens of Nevada, including consideration of minority access to licensure, (3) recommendations of changes, if any, relating to state and local fees and taxation of the marijuana industry, and (4) analysis of adequacy of safeguards to protect minors.

31. Purpose of Compromise and Settlement. The parties have each entered into this Agreement solely for the purpose of settling and compromising the Disputes and the Lawsuit and nothing contained in this Agreement or its performance shall be deemed to be an admission or acknowledgment of: liability, the existence of damages or the amount of any damages relating to the Disputes or the Lawsuit.

32. Non-Participating Party Procedure: The Settling Parties agree to cooperate to obtain final resolution of Lawsuit (“Global Settlement”) consistent with this Agreement.

33. Non-Transferability. For a period of 2 years from July 1, 2020, no license transferred to a Settling Plaintiff herein may be transferred to any entity without prior written approval of the party giving up the designated license in this Agreement. This prohibition on transfers shall not apply to good faith corporate mergers, buyouts and/or acquisitions, which shall not be utilized for purposes of circumventing this paragraph. For this same period of time, LivFree and MM or related entities will not obtain ownership of any GreenMart licenses transferred herein. This non-transferability provision shall not be circumvented by, including but not limited to, any consulting, management or licensing/IP agreement, or by other means. Specifically excepted from this prohibition is a transfer from a Settling Party to an additional plaintiff in the Lawsuit (“a Non-settling Plaintiff”) provided that any such transfer is only utilized towards a global or more inclusive resolution of the Lawsuit (e.g., a transfer of a rural license from an ETW Plaintiff to a Non-settling plaintiffs such as Rural Remedies if Rural Remedies and NWC give complete releases approved by the State), subject to the consent of the Settling Defendant who transferred the license pursuant to this Agreement , which shall not be unreasonably withheld.

34. Cooperation & Non-Interference. The parties agree that they will not use or refer to the Lawsuit as part of any interactions with or lobbying efforts to any governmental agency to prevent any other party from obtaining local government approval and/or from obtaining an approval at final inspection for the licenses retained by any party or assigned to any party, including but limited to a party seeking an extension or trying to secure additional time to obtain and SUP from a local jurisdiction.

Despite the assignment of rural county licenses to certain Settling Parties, all parties hereto expressly reserve their right to vigorously oppose any legislative action regarding the relocation of such licenses to different jurisdictions. MM, LivFree, Qualcan, Thrive, and others have

expressly informed the Settling Parties that they are vehemently opposed to any such transfer. In the event of such transfer, MM, LivFree, Qualcan, Thrive and others expressly reserve their rights to file a declaratory relief action to prevent such relocation and/or seek other appropriate legal remedies.

35. Location of Adult-Use Establishments. The Parties agree that the physical address of any adult-use cannabis establishment utilizing any of the conditional licenses transferred pursuant to Paragraph 1 of this Agreement may not be within 1,500 feet of any adult-use cannabis establishment that existed as of the Effective Date of this Agreement. Nothing in this paragraph applies to any other licenses held by any parties or any entity that already has a special use permit.

GENERAL PROVISIONS

36. No Wrongdoing. The Parties acknowledge that this Agreement is entered into solely for the purpose of compromising disputed claims and avoiding the time and expense of litigation. It is expressly understood and agreed that this Agreement represents the settlement of disputed claims and nothing contained in this Agreement shall constitute or be treated as an admission of any wrongdoing or liability on the part of any Party hereto.

37. Enforcement. In the event of the breach of this Agreement by any party, the remedies of the non-breaching parties shall be limited to enforcement of this Agreement for breach of this Agreement.

38. Mediation. If any of the Parties breaches or terminates this Agreement but one of the other Parties disputes the basis for that breach or termination, the Parties agree that in the first instance, they shall attempt to resolve such dispute through mediation with the Honorable Jennifer Togliatti (Retired) at Advanced Resolution Management (“ARM”) (or, if she is not available, a mediator agreed upon by the Parties).

This Agreement to mediate all disputes applies even if some person or entity claims that this Agreement is void, voidable or unenforceable for any reason.

39. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns. With this Agreement requiring approval of the Nevada Tax Commission, the binding effect of this Agreement specifically includes the CCB as successor to the DOT in its capacity as regulator of the marijuana program in the State of Nevada. Except as specifically provided in prior paragraphs of this Agreement, this Agreement is not intended to create, and shall not create, any rights in any person who is not a party to this Agreement.

40. Entire Agreement. This Agreement contains the entire agreement between the parties and may not be changed or terminated orally but only by a written instrument executed by the parties after the date of this Agreement.

41. Construction. The terms and conditions of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party. The parties acknowledge that each of them has reviewed this Agreement and has had the opportunity to have it reviewed by their attorneys and that any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, including its exhibits or any amendments.

42. Partial Invalidity. Except with respect to Paragraph 7, if any term of this Agreement or the application of any term of this Agreement should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.

43. Attorneys' Fees. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement, the prevailing party shall be entitled to recover as damages its attorneys' fees and costs incurred, including but not limited to mediation fees, whether or not the action is reduced to judgment. For the purposes of this provision, the "prevailing party" shall be that party who has been successful with regard to the main issue, even if that party did not prevail on all the issues.

44. Governing Law and Forum. The laws of the State of Nevada applicable to contracts made or to be wholly performed there (without giving effect to choice of law or conflict of law principles) shall govern the validity, construction, performance and effect of this Agreement. Any lawsuit to interpret or enforce the terms of this Agreement shall be brought in a court of competent jurisdiction in Clark County, Nevada. The Parties acknowledge the matters involved in the Lawsuit and this Agreement may involve conduct and concepts in violation of Federal law regardless of compliance with applicable State law. The Parties expressly waive the defense of illegality under the Federal Controlled Substances Act.

45. Necessary Action. Each of the Settling Parties shall do any act or thing and execute any or all documents or instruments necessary or proper to effectuate the provisions and intent of this Agreement.

46. Counterparts. This Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages. This Agreement may be executed by signatures provided by electronic facsimile transmission (also known as "Fax" copies), or by electronic signature, which signatures shall be as binding and effective as original signatures.

47. Notices. Any and all notices and demands by or from any party required or desired to be given under this Agreement shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served by registered or certified mail in the manner provided, service shall be conclusively deemed given upon receipt or attempted delivery, whichever is sooner.

48. Miscellaneous. The headers or captions appearing at the commencement of the paragraph of this Agreement are descriptive only and for convenience in reference to this Agreement and shall not define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

Masculine or feminine pronouns shall be substituted for the neuter form and vice versa and the plural shall be substituted for the singular form and vice versa in any place or places in this Agreement in which the context requires such substitution or substitutions, and references to "or"

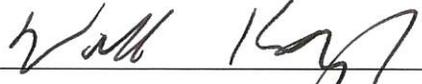
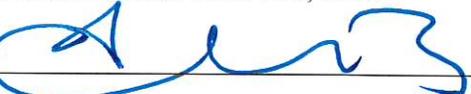
7/28/2020

are used in the inclusive sense of “and/or”.

[Signatures on following pages]

7/27/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

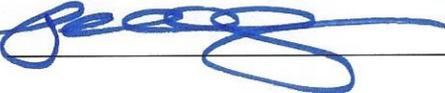
<p>LIVFREE WELLNESS, LLC</p> <p>By: <u></u></p> <p>Print Name: <u>Will Kemp</u></p> <p>Title: <u>Attorney-in-Fact</u></p>	<p>MM DEVELOPMENT COMPANY, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>ETW MANAGEMENT GROUP LLC</p> <p>By: <u></u></p> <p>Print Name: <u>Adam K Bull</u></p> <p>Title: <u>owner</u></p>	<p>GLOBAL HARMONY LLC</p> <p>By: <u></u></p> <p>Print Name: <u>Adam K Bull</u></p> <p>Title: <u>owner</u></p>
<p>ZION GARDENS LLC</p> <p>By: <u></u></p> <p>Print Name: <u>Adam K Bull</u></p> <p>Title: <u>owner</u></p>	<p>JUST QUALITY, LLC</p> <p>By: <u></u></p> <p>Print Name: <u>Adam K Bull</u></p> <p>Title: <u>owner</u></p>
<p>LIBRA WELLNESS CENTER, LLC</p> <p>By: <u></u></p> <p>Print Name: <u>Adam K Bull</u></p> <p>Title: <u>owner</u></p>	<p>ROMBOUGH REAL ESTATE, INC.</p> <p>By: <u></u></p> <p>Print Name: <u>Adam K Bull</u></p> <p>Title: <u>owner</u></p>

7/27/2020

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

<p>LIVFREE WELLNESS, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>MM DEVELOPMENT COMPANY, INC.</p> <p>By:  _____</p> <p>Print Name: Leighton Koehler</p> <p>Title: General Counsel</p>
<p>ETW MANAGEMENT GROUP LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>GLOBAL HARMONY LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>ZION GARDENS LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>JUST QUALITY, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LIBRA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>ROMBOUGH REAL ESTATE, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

7/27/2020

<p>NEVADA WELLNESS CENTER, LLC</p> <p>By: <u></u></p> <p>Print Name: <u>Theodore Pantaleo</u></p> <p>Title: <u>ATTY</u></p>	<p>QUALCAN, LLC</p> <p>By: <u></u></p> <p>Print Name: <u>Peter S. Christensen</u></p> <p>Title: <u>Attorney</u></p>
<p>LONE MOUNTAIN PARTNERS, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>NEVADA ORGANIC REMEDIES, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>GREENMART OF NEVADA NLV, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>HELPING HANDS WELLNESS CENTER, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
	<p>CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

7/28/2020

<p>NEVADA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>QUALCAN, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LONE MOUNTAIN PARTNERS, LLC</p> <p>By: _____ </p> <p>Print Name: <u>George Archos</u></p> <p>Title: <u>Manager</u></p>	<p>NEVADA ORGANIC REMEDIES, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>GREENMART OF NEVADA NLV, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>HELPING HANDS WELLNESS CENTER, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
	<p>CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

7/27/2020

<p>NEVADA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>QUALCAN, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LONE MOUNTAIN PARTNERS, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>NEVADA ORGANIC REMEDIES, LLC</p> <p>By: <u>Raymond C. Whitaker III</u></p> <p>Print Name: <u>Raymond C. Whitaker III</u></p> <p>Title: <u>Authorized Person</u></p>
<p>GREENMART OF NEVADA NLV, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>HELPING HANDS WELLNESS CENTER, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
	<p>CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

7/27/2020

<p>NEVADA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>QUALCAN, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LONE MOUNTAIN PARTNERS, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>NEVADA ORGANIC REMEDIES, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>GREENMART OF NEVADA NLV, LLC</p> <p>By: <u></u></p> <p>Print Name: Elizabeth Stavola</p> <p>Title: Manager</p>	<p>HELPING HANDS WELLNESS CENTER, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
	<p>CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

7/27/2020

<p>NEVADA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>QUALCAN, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LONE MOUNTAIN PARTNERS, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>NEVADA ORGANIC REMEDIES, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>GREENMART OF NEVADA NLV, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>HELPING HANDS WELLNESS CENTER, INC.</p> <p>By: <u>Mares J</u></p> <p>Print Name: <u>Kearis Turtora</u></p> <p>Title: <u>PRESIDENT</u></p>
	<p>CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

<p>NEVADA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>QUALCAN, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LONE MOUNTAIN PARTNERS, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>NEVADA ORGANIC REMEDIES, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>GREENMART OF NEVADA NLV, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>HELPING HANDS WELLNESS CENTER, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
	<p>CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC</p> <p>By:  _____</p> <p>Print Name: _____</p> <p>Title: _____</p>



7/28/2020

STATE OF NEVADA, DEPARTMENT OF
TAXATION

By: Melanie Y

Print Name: Melanie Young

Title: Executive Director

Exhibit A

PAGE INTENTIONALLY LEFT BLANK

Exhibit A contains confidential lease terms for
Helping Hands/LivFree Unincorporated Clark
County Location*

* Confidential terms will be disclosed to Cannabis Compliance Board to the extent the CCB requires.

Exhibit B

Mutual Release

This Mutual Release (the “Release”) is entered into as _____, 2020 (the “Effective Date”), among LivFree Wellness, LLC, a Nevada limited liability company (“LivFree”), MM Development Company, Inc., a Nevada corporation, (“MM”); ETW Management Group LLC, Global Harmony LLC, Just Quality, LLC, Libra Wellness Center, LLC, Rombough Real Estate, Inc., and Zion Gardens LLC, (collectively the “ETW Plaintiffs”); Nevada Wellness Center, LLC, a Nevada limited liability company (“NWC”); Qualcan, LLC, a Nevada limited liability company (“Qualcan”) (collectively, “Settling Plaintiffs” or individually, a “Settling Plaintiff”); Lone Mountain Partners, LLC, a Nevada limited liability company (“Lone Mountain”); Nevada Organic Remedies, LLC, a Nevada limited liability company (“NOR”); Greenmart of Nevada NLV, LLC, a Nevada limited liability company (“GreenMart”); Helping Hands Wellness Center, Inc., a Nevada corporation (“Helping Hands”); CPCM Holdings, LLC, a Nevada limited liability company, Cheyenne Medical, LLC, a Nevada limited liability company, and Commerce Park Medical, LLC, a Nevada limited liability company (collectively “Thrive”); and the State of Nevada, Department of Taxation (“DOT”) (collectively “Settling Defendants” or individually, a “Settling Defendant”).

WHEREAS, the Settling Plaintiffs and the Settling Defendants (each individually, a “Party” and collectively, the “Parties”) entered that certain Settlement Agreement entered into as of July __, 2020 (the “Settlement Agreement”); and

WHEREAS, the Parties desire to execute this Release in accordance with the terms and conditions of this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Company and Vendor hereby agree as follows:

1. Except for such rights, claims or obligations as may be created by the Settlement Agreement, LivFree, MM, ETW Plaintiffs, NWC, and Qualcan, forever, fully and unconditionally release and discharge:

Lone Mountain, NOR, Greenmart, Helping Hands, Thrive and the DOT, their past, present, and future subsidiaries, parents, affiliates, partners, joint venturers, heirs, successors, assigns, contractors, subcontractors, officers, directors, shareholders, members, managers, employees, accountants, agents, representatives, attorneys, insurers, successors and assigns (in their individual and representative capacities),

from any and all claims, demands, losses, damages, actions, causes of action, suits, debts, promises, liabilities, obligations, liens, costs, expenses, attorneys’ fees, indemnities, subrogations (contractual or equitable) or duties, of any nature, character or description whatsoever, whether known or unknown, at law or in equity, fixed or contingent, accrued or not yet accrued, matured or not yet matured, anticipated or unanticipated, asserted or unasserted,

arising out of or related to, directly or indirectly, the Lawsuit and the Disputes, as defined in the corresponding Settlement Agreement.

2. Except for such rights, claims or obligations as may be created by the Settlement Agreement, Lone Mountain, NOR, Greenmart, Helping Hands, Thrive and the DOT, forever, fully and unconditionally releases and discharges:

LivFree, MM, ETW Plaintiffs, NWC, and Qualcan, their past, present, and future subsidiaries, parents, affiliates, partners, joint venturers, heirs, successors, assigns, contractors, subcontractors, officers, directors, shareholders, members, managers, employees, accountants, agents, representatives, attorneys, insurers, successors and assigns (in their individual and representative capacities),

from any and all claims, demands, losses, damages, actions, causes of action, suits, debts, promises, liabilities, obligations, liens, costs, expenses, attorneys' fees, indemnities, subrogations (contractual or equitable) or duties, of any nature, character or description whatsoever, whether known or unknown, at law or in equity, fixed or contingent, accrued or not yet accrued, matured or not yet matured, anticipated or unanticipated, asserted or unasserted,

arising out of or related to, directly or indirectly, the Lawsuit and the Disputes, as defined in the corresponding Settlement Agreement.

3. Each Party jointly and severally acknowledges that they may later discover material facts in addition to, or different from, those which they now know, suspect or believe to be true with respect to the Disputes, the Lawsuit or the negotiation, execution or performance of this Agreement. Each party further acknowledges that there may be future events, circumstances or occurrences materially different from those they know or believe likely to occur. It is the intention of the parties to fully, finally and forever settle and release all claims and differences relating to the Disputes or the Lawsuit. The releases provided in this Agreement shall remain in full force and effect notwithstanding the discovery or existence of any such additional or different facts or occurrence of any such future events, circumstances or conditions.
4. Each Party affirms that it has not filed with any governmental agency or court any type of action or report against any of the other Party other than the Lawsuit, and currently knows of no existing act or omission by any other Party that may constitute a claim or liability excluded from the releases set forth herein.
5. Effect of Release. In the event of any inconsistencies between this Release and the Settlement Agreement, the terms of this Release shall govern and control. Except as provided for herein, all other terms and conditions of the Settlement Agreement shall remain unchanged and the parties hereby reaffirm the terms and conditions of the Settlement Agreement. This Release may only be varied by a document, in writing, of even or subsequent date hereof, executed by the parties hereto.

6. Counterparts. This Release may be executed in any number of counterparts, whether by original, copy, email or telecopy signature, each of which, when executed and delivered, will be deemed an original, but all of which together will constitute one binding agreement and instrument
7. Paragraphs 35 through 47 of the Settlement Agreement are hereby incorporated as if fully set forth herein and govern the interpretation of this Release.

[Signature Page Follows]

<p>LIVFREE WELLNESS, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>MM DEVELOPMENT COMPANY, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>ETW MANAGEMENT GROUP LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>GLOBAL HARMONY LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>ZION GARDENS LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>JUST QUALITY, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LIBRA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>ROMBOUGH REAL ESTATE, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

<p>NEVADA WELLNESS CENTER, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>QUALCAN, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>LONE MOUNTAIN PARTNERS, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>NEVADA ORGANIC REMEDIES, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
<p>GREENMART OF NEVADA NLV, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>	<p>HELPING HANDS WELLNESS CENTER, INC.</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>
	<p>CPCM Holdings, LLC, CHEYENNE MEDICAL, LLC, and COMMERCE PARK MEDICAL, LLC</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

STATE OF NEVADA, DEPARTMENT OF
TAXATION

By: _____

Print Name: _____

Title: _____

EXHIBIT “2”

EXHIBIT “2”



STEVE SISOLAK
Governor
JAMES DEVOLLD
Chair, Nevada Tax Commission
MELANIE YOUNG
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION

Web Site: <https://tax.nv.gov>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

Governor Sisolak Signs Bill Creating Cannabis Compliance Board

June 12, 2019

Today, Governor Steve Sisolak signed [Assembly Bill 533](#), which creates the Cannabis Compliance Board, one of the governor's top priorities for the 2019 legislative session.

"Our marijuana industry is now a key part of our state economy, and to make sure it stays that way, we must hold it to the highest standard while empowering the industry to continue thriving," **Governor Sisolak said.** "Nevada's first-ever Cannabis Compliance Board will ensure this critical part of our state's economy is positioned to become the gold standard for the nation."

Earlier this year, Governor Sisolak appointed a [seven-member advisory panel on the formation of the Cannabis Compliance Board \(CCB\)](#), under Executive Order 2019-03. Assembly Bill 533 is a reflection of the advisory panel's work over the course of the session. The CCB will consist of five members appointed by the governor and will be modeled after the Nevada Gaming Control Board, which oversees Nevada's highly-respected and well-regulated successful gaming industry. The CCB will be a comprehensive regulatory board that will include expertise in a range of fields, including financial and accounting, law enforcement, medicine, regulatory and legal compliance, and cannabis, generally. In the coming weeks, the governor will begin the appointment process for the five members of the CCB. A prerequisite to appointment to the CCB is that potential members be devoid of financial or other conflicting interests, which may affect the impartiality of an individual's service as a regulator.

Assembly Bill 533 also establishes a Cannabis Advisory Commission, to which the governor will appoint experts in direct and marijuana-related fields. These individuals will have the freedom to consider a number of outstanding issues regarding cannabis,

including inclusion, addiction prevention, training programs, consumption, dram shop laws, and other important questions. Advisory Commission members, as part of an advisory board, will be able to share their expertise even as members of advocacy groups and companies operating in the cannabis economy. Their recommendations will not bind the CCB, but will inform the CCB and its decision making.

Establishing the CCB is part of Governor Sisolak's multi-pronged approach to reforming and strengthening Nevada's legal cannabis industry and ensuring the economic opportunities it creates are available to all Nevadans. This session, Governor Sisolak proposed an [amendment](#) to [Senate Bill 32](#), which he signed into law last month, that increases transparency in the marijuana licensing process by subjecting certain information about license applicants, as well as the methods used to issue licenses, to public disclosure. That information is now available to the public on the [Department of Taxation's website](#).

Governor Sisolak has also signed multiple bills that aim to remove economic barriers to legal cannabis users and individuals with prior cannabis convictions. [Assembly Bill 132](#) makes Nevada the first state to ban employers from refusing to hire job applicants who test positive for marijuana during the hiring process. This bill contains notable common-sense exceptions for certain professions, such as public safety and transportation. [Assembly Bill 192](#) provides for a process by which individuals may petition to have their criminal records sealed if their conviction was for an offense that has later been decriminalized, such as a marijuana conviction.

###

EXHIBIT “3”

EXHIBIT “3”

Subject: Fwd: DOT HERBAL CHOICE

Date: Thursday, July 30, 2020 at 12:28:42 PM Pacific Daylight Time

From: Sigal Chattah

To: Amy Sugden

----- Forwarded message -----

From: Sigal <sigal@thegoodlawyerlv.com>

Date: Fri, Jul 17, 2020 at 7:43 PM

Subject: Re: DOT HERBAL CHOICE

To: Jared Kahn <jkahn@jk-legalconsulting.com>

Hi Jared

Much appreciated, Madrigal has been removed from Herbal Choice completely over a month ago. That being said I will communicate your sentiment to my Clients

Thank you

Sigal Chattah, Esq.

Sent from my iPhone. Please excuse grammar and spelling errors.

On Jul 17, 2020, at 6:51 PM, Jared Kahn <jkahn@jk-legalconsulting.com> wrote:

Sigal -

At this stage, Defendant Intervenors believe the Herbal Choice license standing may likely be in jeopardy due to the recent criminal implications linked to family and/or those linked to the licensee. Given such a result, which may or may not occur of course, the Intervenors do not believe it would be wise to utilize a license in settlement for a licensee under such a microscope that may lose it anyway.

Therefore, it does not appear any intervenors believe it is necessary to settle with Herbal Choice at this stage due to the HC current problems presenting in this matter.

Jared Kahn, Esq.

JK Legal & Consulting, LLC

9205 West Russell Rd., Suite 240

Las Vegas, NV 89148

P: (702) 708-2958

F: (866) 870-6758

jkahn@jk-legalconsulting.com

* Admitted in Nevada and Oregon

Please consider the environment before printing this email.

****NOTICE**** This message is intended for the use of the individual or entity to which it is addressed and may contain attorney/client information that is privileged, confidential and exempt from disclosure

under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply email or by telephone (702) 708-2958, and immediately delete this message and all its attachments.

From: Sigal <sigal@thegoodlawyerlv.com>
Sent: Friday, July 17, 2020 5:34:35 PM
To: Jared Kahn <jkahn@jk-legalconsulting.com>
Subject: Re: DOT HERBAL CHOICE

Ok. So let's see what we can do. Like I said, I represent herbal choice? Anything good on the table?

Sent from my iPhone. Please excuse grammar and spelling errors.

On Jul 17, 2020, at 4:31 PM, Jared Kahn <jkahn@jk-legalconsulting.com> wrote:

Sigal -

I have been working the settlement for over a year, trying to herd the cats and structure a deal. I work with all the licensee winners to determine the best way to settle this case and have been entrenched with plaintiff groups in our attempt to settle.

Jared Kahn, Esq.
JK Legal & Consulting, LLC
9205 West Russell Rd., Suite 240
Las Vegas, NV 89148
P: (702) 708-2958
F: (866) 870-6758

jkahn@jk-legalconsulting.com

* Admitted in Nevada and Oregon

Please consider the environment before printing this email.

****NOTICE**** This message is intended for the use of the individual or entity to which it is addressed and may contain attorney/client information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply email or by telephone (702) 708-2958, and immediately delete this message and all its attachments.

From: Sigal Chattah <sigal@thegoodlawyerlv.com>
Sent: Friday, July 17, 2020 4:28:39 PM
To: jkahn@jk-legalconsulting.com <jkahn@jk-legalconsulting.com>
Subject: DOT HERBAL CHOICE

Hey Jared,

Do you have any idea why Bult would tell me to talk to you regarding settlement on Herbal Choice? I don't want to walk over to you. But I'm super curious

Let me know.--

Chattah Law Group
5875 S. Rainbow Blvd #203
Las Vegas, NV 89118
Tel: (702) 360-6200
Thegoodlawyerlv.com

This e-mail communication is a confidential attorney-client communication intended only for the person named above. If you are not the person named above, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please e-mail the sender that you have received the communication in error. Thank you.

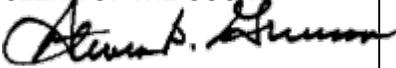
IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

--

Chattah Law Group
5875 S. Rainbow Blvd #203
Las Vegas, NV 89118
Tel: (702) 360-6200
Thegoodlawyerlv.com

This e-mail communication is a confidential attorney-client communication intended only for the person named above. If you are not the person named above, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please e-mail the sender that you have received the communication in error. Thank you.

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OST
AMY L. SUGDEN, ESQ.
Amy L. Sugden, Bar No. 9983
9728 Gillespie St.
Las Vegas, Nevada 89183
Telephone: (702) 307-1500
Facsimile: (702) 507-9011
Attorney for THC Nevada, LLC

SIGAL CHATTAH, ESQ.
Nev. Bar No.: 8264
CHATTAH LAW GROUP
5875 S. Rainbow Blvd. #203
Las Vegas, Nevada 89118
Tel.: (702) 360-6200
Fax: (702) 643-6292
Chattahlaw@gmail.com
Attorney for Plaintiff
Herbal Choice, Inc.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In Re: D.O.T. Litigation,) Case No.: A-19-787004-B
)
) Dept. No: XI
)
)
) CONSOLIDATED WITH:
) A-18-785818-W
) A-18-786357-W
) A-19-786962-B
) A-19-787035-C
) A-19-787540-W
) A-19-787726-C
) A-19-801416-B
)
)
)
)
)

EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER WITH NOTICE AND MOTION FOR PRELIMINARY INJUNCTION ON ORDER SHORTENING TIME

1 COME NOW, THC NEVADA, LLC (“THC NV”), by and through its counsel, Amy L.
2 Sugden, and HERBAL CHOICE, INC. (hereinafter HERBAL CHOICE) by and through their
3 Counsel, SIGAL CHATTAH, ESQ. of CHATTAH LAW GROUP, and hereby submit this *ex parte*
4 application for temporary restraining order with notice, and motion for preliminary injunction to
5 prevent certain parties from attempting to enter into a partial settlement to redistribute privileged
6 marijuana dispensary licenses from certain Intervenors to certain Plaintiffs, among other material
7 terms. THC NV and HERBAL CHOICE will suffer irreparable injury if a Temporary Restraining
8 Order (“TRO”) and/or Preliminary Injunction does not issue to prevent this redistribution of licenses
9 and the parties attempt to strong arm THC NV, HERBAL CHOICE and remaining Plaintiffs into a
10 dismissal of their claims.
11

12
13 This Application is brought under NRS 33.010(1)-(3), NRCF 65(b)(1), and is based upon the
14 Memorandum of Points and Authorities below, the Declarations of Amy L. Sugden and Sigal Chattah,
15 the evidentiary support attached hereto, the pleadings and papers on file, and any argument that the
16 Court may entertain on this matter.
17

18 DATED this 28th day of July 2020

19
20 SIGAL CHATTAH, ESQ

AMY L. SUGDEN, ESQ.

21 /s/ Sigal Chattah
22 Sigal Chattah
23 Nevada Bar No. 8264
24 5875 S. Rainbow Blvd #203
25 Las Vegas, NV 89118
26 *Attorney for Plaintiff*
27 *Herbal Choice, Inc.*

/s/ Amy L. Sugden
Amy L. Sugden
Nevada Bar No 9983
9728 Gilespe Street
Las Vegas, NV 89183
Attorney for Plaintiff
THC Nevada, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The basis for the entry of the temporary restraining order is to prevent certain parties from colluding and attempting to enter into a stealth partial settlement to be ratified by the Nevada Tax Commission, to the detriment of THC NV, HERBAL CHOICE and others who have not been included in the settlement. Now the purported settlement, by the Settling Parties is going to be submitted to the Nevada Tax Commission on July 31, 2020 at 2:00p.m. for approval.¹ Seemingly, settling Plaintiffs are attempting to bypass any Motion for Good Faith Settlement to be filed with the Court, get their administrative approval and *force this Court to submit to the Nevada Tax Commission's approval* of a bad faith, collusively procured partial settlement.

It is significant to note that both THC NV and HERBAL CHOICE have no idea what has been resolved and what is to be submitted before the Nevada Tax Commission on Friday; perhaps the Settling Parties would be so kind as to share same with THC NV, HERBAL CHOICE and this Court prior to submitting to the Nevada Tax Commission.

While undersigned Plaintiffs' understand that the Nevada Tax Commission is simply the administrative body and any final approval must be issued by this Court through a Motion for Good Faith; as explained *infra*, the Settling Parties should not even be allowed to proceed in front of the Nevada Tax Commission based on their continuous collusion and bad faith in procuring such a settlement and their deliberate exclusion of others in the process.

On or about July 16, 2020, William Kemp, on behalf of LivFree Wellness, LLC, and MM Development Company, Inc., (hereinafter collectively referred to as "Planet 13") stood before this Court and announced that a partial – and eventually possible global – settlement had been obtained between certain parties ("Partial Settlement"). It is significant to note that at no time during the purported secret and collusive negotiations were THC NV, HERBAL CHOICE or other Plaintiffs

¹¹ See 7/31/2020 Agenda attached hereto as Exhibit "1"

1 included in any of the discussions. A partial settlement agreement was circulated amongst the
2 negotiating parties, deliberately and intentionally omitting the above noted Plaintiffs from any
3 discussions.

4 Since that time and on a daily basis throughout the course of this trial, counsel for certain
5 parties have been huddling around the courtroom and cloistering outside in the hallways of the South
6 Hall at the Las Vegas Convention Center, to strategically organize a secret settlement that is designed
7 to purposely harm the remaining parties who are not party to the settlement, including THC NV and
8 HERBAL CHOICE. It has been and continues to be said settling Plaintiffs' position that if a majority
9 of Plaintiffs settle, than the smaller Plaintiffs could not carry this trial and would be forced to take
10 smaller nuisance fee type settlements.

11 It is clear that while settling Plaintiffs are negotiating significantly impactful settlements for
12 their Clients, which would dispose of a majority of the Plaintiff parties to this action, there is a
13 deliberate and intentional agenda to disregard and injure Plaintiffs THC NV and HERBAL CHOICE,
14 INC. These secret collusive and injurious negotiations are specifically what the Supreme Court
15 decision of *In re MGM Grand Hotel Fire Litigation*² sought to prevent as delineated more *infra*.

16 As such, THC NV and HERBAL CHOICE, **being offered no part in such settlement**
17 **negotiations or even being advised they were going on**, has no choice but to compel the Court to
18 enjoin any enforcement of this covert Partial Settlement and maintain the status quo until there is a
19 full and fair opportunity for this Court to conduct a hearing to determine whether or not to issue a
20 preliminary injunction regarding the same and/or consider the merits of the Partial Settlement pursuant
21 to a properly brought motion for good faith settlement.

22 Undersigned Parties further request this Court preclude introduction of this covert and
23 injurious settlement as an item on the Nevada Tax Commission's Consent Agenda scheduled to occur
24 on July 31, 2020.

25 //

26 //

27 //

28 ² 570 F. Supp. 913, 927 (D.Nev.1983).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

STATEMENT OF FACTS

1. The Nevada Legislature passed a number of bills during the 2017 legislative session concerning the licensing, regulation, and operation of recreational marijuana establishments in the State of Nevada.

2. One of those bills, Assembly Bill 422, transferred responsibility for the registration, licensing, and regulation of marijuana establishments from the State of Nevada Division of Public and Behavioral Health to the State of Nevada Department of Taxation (the “Department”).

3. This legislation was approved by the voters at the General Election of 2016 as Initiative Petition, Ballot Question No. 2, entitled the “Regulation and Taxation of Marijuana Act,” (the “Ballot Initiative”).

4. It was enacted by the Nevada Legislature and is codified at NRS Chapter 453D.

5. After the enactment of NRS Chapter 453D, on May 8, 2017, the Department enacted temporary regulations pertaining to the issues of retail marijuana licenses (“Temporary Regulations”).

6. On or around December 16, 2017, the Department issued a Notice of Intent to Adopt Permanent Regulations Pursuant to the Mandates of NRS 453D.200(1).

7. On or around January 16, 2018, the Department held a public hearing on the proposed permanent regulations, which was attended by numerous members of the public and marijuana business industry.

8. In early 2018, the Department adopted regulations governing the issuance, suspension, or revocation of retail marijuana licenses in LCB File No. R092-17, which were codified in NAC Chapter 453D (the “Regulations”).

9. On July 6, 2018, the Department made available the application package for non-Early Start Program applicants on the Department website and via a Department list serve email.

10. The Department required that the applications be returned in complete form between September 7 and September 20, 2018.

1 11. The applications were to be submitted to the Department from September 7, 2018, to
2 September, 20, 2018.

3 12. The Department received applications exceeding the number of awardable licenses,
4 and it utilized the regulations to engage in a competitive bidding process, which gave rise to the present
5 dispute.

6 13. In total, 127 applicants applied for retail marijuana licenses in the 17 jurisdictions.

7 14. On December 5, 2018, the Department awarded conditional retail marijuana licenses.

8 15. The Department issued 61 recreation marijuana retail store conditional licenses to 17
9 applicants.

10 16. In other words, only 13% of the applicants were awarded at least one retail marijuana
11 license.

12 17. After the expiration of the Early Start Program during the period specified by the
13 Department, THC NV submitted three separate applications that contained the same substantive
14 information for issuance of retail marijuana license at different localities.

15 18. Specifically, THC NV submitted applications in the following jurisdictions:

PLAINTIFF	JURISDICTION
THC NEVADA LLC	Clark County – North Las Vegas
	Clark County – Las Vegas
	Washoe County - Reno
HERBAL CHOICE, INC.	Clark County- Las Vegas
	Clark County- City of Las Vegas
	Clark County- City of North Las Vegas

19 19. HERBAL CHOICE also submitted their three applications on or about September 7-
20, 2018.

1 20. On or around December 5, 2018, each of THC NV's and HERBAL CHOICE
2 applications were denied by identical written notices issued by the Department.

3 21. After receiving the denial notices from the Department, THC NV challenged its scores
4 at meetings held by the Department on or around January 10, 2019.

5 22. The Department refused to consider THC NV's challenges.

6 23. On January 4, 2019, THC NV and HERBAL CHOICE *as part of* the ETW Plaintiffs
7 filed its Complaint against the Department, Case No. A-19-787004-B.

8 24. Thereafter, THC NV and HERBAL CHOICE *as part of* the ETW Plaintiffs filed and
9 served their Third Amended Complaint against Cheyenne Medical, LLC; Circle S Farms, LLC; Clear
10 River, LLC; Commerce Park Medical L.L.C.; Deep Roots Medical LLC; Essence Henderson, LLC,
11 Essence Tropicana, LLC; Eureka Newgen Farms LLC; Green Therapeutics LLC; Greenmart; Helping
12 Hands Wellness Center, Inc.; Lone Mountain Partners, LLC; Nevada Organic Remedies LLC; Polaris
13 Wellness Center L.L.C.; Pure Tonic Concentrates LLC; TRNVP098; Wellness Connection of Nevada,
14 LLC (collectively, the "Successful Applicants") and the Department (together with the Successful
15 Applicants, the "Defendants").

16 25. In their Complaint, THC NV and HERBAL CHOICE *as part of* ETW Plaintiffs
17 asserted the following claims against the Department and the Successful Applicants: (1) Violation of
18 Substantive Due Process against the Department, (2) Violation of Procedural Due Process against the
19 Department, (3) Equal Protection Violation against the Department; (4) Declaratory Judgment against
20 all the Defendants, (5) Petition for Judicial Review against all of the Defendants, and (6) Petition for
21 Writ of Mandamus against the Department.

22 26. Upon demand and part and parcel of this Court's Order's grant of the Preliminary
23 Injunction, both THC NV and HERBAL CHOICE posted surety bonds in in excess of \$300,000.00
24 respectively.

25 27. On or about May 20, 2020, HERBAL CHOICE substituted its counsel of record herein
26 so that undersigned Counsel Sigal Chattah, replaced the firm of Brownstein Hyatt Farber Schreck,
27
28

1 LLC.

2 28. On or about June 24, 2020, THC NV substituted its counsel of record herein so that the
3 undersigned counsel, Amy L. Sugden, replaced the firm of Brownstein Hyatt Farber Schreck, LLC.

4 29. It is significant to note that neither THC NV nor HERBAL CHOICE ever signed
5 conflict waivers during the course of representation by Brownstein Hyatt, and it became clear that a
6 conflict and preferential treatment of certain Plaintiffs were made prior to said substitutions during the
7 course of former Counsels representation of these Plaintiffs.

8 30. Trial was set to begin on July 13, 2020 pursuant to the Amended Trial Protocol No. 2.

9 31. On or about July 16, 2020, William Kemp, Esq. counsel for Planet 13, pronounced a
10 partial or even possible global settlement had been reached.

11 32. Upon information and belief, the Plaintiffs involved in the Partial Settlement include:
12 Planet 13; ETW Plaintiffs; Nevada Wellness Center (“NWC”), and Qualcan, LLC (collectively
13 “Partial Settlement Plaintiffs”).

14 33. Neither THC NV nor HERBAL CHOICE were offered an opportunity to participate
15 in the Partial Settlement, nor to date has been provided any proposed settlement agreement regarding
16 the same by the Partial Settlement Plaintiffs.

17 34. Upon information and belief, THC NV and HERBAL CHOICE understand that the
18 Partial Settlement contemplates the redistribution of certain dispensary licenses from certain
19 Successful Applicants to Partial Settlement Plaintiffs in addition to other material terms and
20 conditions, such of which include the exchange of additional monies.

21 35. Upon information and belief, the Partial Settlement Plaintiffs *purposely excluded* THC
22 NV, HERBAL CHOICE and other Plaintiffs from participation and opportunity to be a part of the
23 Partial Settlement in order to strategically gain an advantage to gain access and control of the limited
24 dispensary licenses available.

25 36. Upon information and belief, the Partial Settlement includes a provision to further
26 eliminate the purposely excluded remaining Plaintiffs, including THC NV and HERBAL CHOICE,
27
28

1 by specifically providing for the Partial Settlement Plaintiffs to seek injunctive ***relief to limit the***
2 ***remedies available to the excluded remaining Plaintiffs*** (i.e., in an attempt prevent a complete do-
3 over of the application process sought by the remaining Plaintiffs).

4 37. Such collusively deviant acts by settling parties would essentially paralyze Plaintiffs
5 from seeking the redress from this Court that they are rightfully entitled to and have been litigating
6 over the course of two years.

7 38. Notwithstanding same, Plaintiffs THC NV and HERBAL CHOICE have secured their
8 vested interests in this matter by each surrendering in excess of \$300,000.00 USD held during this
9 litigation.

10 39. As such, THC NV and HERBAL CHOICE seek to enjoin any party from the execution,
11 finalization and/or any attempts to perform pursuant to the Partial Settlement Agreement.

12 40. THC NV and HERBAL CHOICE face the threat of irreparable harm to their ability to
13 pursue its claims in this action to full fruition as a result of the Partial Settlement Agreement which is
14 believed to include collusion at best, fraud and/or tortious conduct at worst, to injure the interest of
15 the non-settling defendants. *In re MGM Grand Hotel Fire Litigation*, 570 F.Supp. 913, 927 (D. Nev.
16 1983).

17 41. Now, Settling Parties seek to have this Partial Settlement placed on the Nevada Tax
18 Commissions Consent Agenda for July 31, 2020 at 2:00p.m for final approval by said administrative
19 body.

20 42. This Court should preclude any such purported settlement, procured in bad faith and
21 deliberately injurious to Plaintiffs that have not been offered to participate, from being introduced to
22 the Nevada Tax Commission, and further advise the Commission of these injurious acts these parties
23 have engaged in.

24 //

25 //

26 //

27 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.
LEGAL ARGUMENT

A. THC NV and HERBAL CHOICE are Entitled to a Temporary Restraining Order on an Ex Parte Basis.

THC NV and HERBAL CHOICE entitled to a temporary restraining order without notice under NRCP 65(b) because irreparable harm will result if an order from this Court is not issued immediately to preserve the status quo. A temporary restraining order without notice is proper if “(1) it clearly appears from specific facts shown by [declaration], or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.” NRCP 65(b). Here, both factors are satisfied:

1. Parties to Partial Settlement Agreement Will Not Suffer Immediate, Irreparable Harm, but Plaintiffs THC NV and HERBAL CHOICE Will Be Greatly and Irreparably Harmed Absent Maintaining the Status Quo.

An injunction is needed to prevent certain parties to this complex litigation from improperly and prematurely attempting to redistribute the licenses that are the subject matter of this suit by presenting the settlement to the Nevada Tax Commission on July 31, 2020. *See Exhibit 1.* Conversely, there is no immediate need to jam the partial redistribution of certain licenses when the entire process is sought to be invalidated by the Non-Settling Plaintiffs.

If certain limited parties, are allowed to redistribute licenses pursuant to the Partial Settlement Agreement without obtaining prior Court approval, but rather by sneaking to the Nevada Tax Commission to push through the limited parties self-serving redistribution of select licenses at issue

1 herein, THC NV and HERBAL CHOICE will be further deprived of due process. Specifically, the
2 Partial Settlement Agreement is believed to have a provision that provides for the settling Plaintiffs to
3 in turn seek a preliminary injunction against Non-Participating Intervenor/Defendants as well as
4 threaten to seek costs and fees to prevent the remaining Plaintiffs who are moving forward to finish
5 trial.

6
7 **2. Parties to the Partial Settlement Should Not Be Heard Before Entry of the TRO**

8 NRCP 65(b) provides that in addition to setting forth the specific facts in an affidavit clearly
9 showing that immediate and irreparable injury, loss or damage will occur before the adverse party can
10 be heard, in opposition that the movant’s attorney certify “the efforts, if any, which have been made
11 to give the notice and the reasons supporting the claim that notice should not be required”. The
12 undersigned counsel certifies herein that notice should not be required given the short time frame in
13 which the threat of the Partial Settlement Agreement is set to go into effect. Assuming this Court
14 believes Notice shall be given, all Parties have been served with the foregoing pleading (so as to not
15 replicate the same egregious and clandestine behavior of the parties to the Partial Settlement).

16
17
18 Moreover, undersigned counsel certifies that THC NV and HERBAL CHOICE undertook
19 numerous actions since that learning about the Partial Settlement to become apprised of such
20 agreement and participate in good faith with the Partial Settlement, but both have been stonewalled.

21 *See Declarations of Amy L. Sugden and Sigal Chattah set forth herein.*

22
23 It is quite apparent that since THC NV and HERBAL CHOICE substituted counsel for trial
24 purposes and separated from the ETW Plaintiffs, this has been used against THC NV and HERBAL
25 CHOICE so that they would be forced out of the Partial Settlement Agreement.

26 //

27 //

28

1 THC NV and HERBAL CHOICE further submits that it has not consented to any such waiver
2 from its former counsel, Brownstein Hyatt Farber Schreck, that alleviates its ethical obligations set
3 forth in Nevada Rules of Professional Conduct 1.9 (Duties to Former Clients).³

4 Thus, not only are THC NV and HERBAL CHOICE at risk of being locked out of this
5 litigation, it is being done so by their former counsel, which should give this Court great concern in
6 contemplating any allowance of the Partial Settlement.

7 As such, THC NV and HERBAL CHOICE have been left with no choice but to obtain
8 protection from the Court in obtaining a TRO to preserve the status quo. Thus, the Court should enter
9 the temporary restraining order, a proposed form of which is attached as Exhibit “2”.

10
11 **B. THC NV and Herbal Choice are Entitled to a Preliminary Injunction.**

12 A preliminary injunction “is extraordinary relief” and the factors met to obtain this relief must
13 be “articulated in specific terms”. *Dep’t of Conservation & Natural Res. v. Foley*, 121 Nev. 77, 80,
14 109 P.3d 760, 762, (2005). A party can only receive a preliminary injunction “when the movant shows
15 a likelihood of success on the merits and a reasonable probability that the nonmovant's conduct will
16 cause irreparable harm if allowed to continue.” *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound*
17 *Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). The party seeking a preliminary injunction must
18 show “by the complaint or affidavit that the commission or continuance of some act, during the
19 litigation, would produce great or irreparable injury to the plaintiff.” *Dixon v. Thatcher*, 103 Nev. 414,
20 415-416, 742 P.2d 1029, 1030, (1987). Finally, the Court may also weigh “the public interest and the
21 relative hardships of the parties in deciding whether to grant a preliminary injunction.” *Clark County*

22
23
24
25
26
27
28

³ On or about July 16, 2020, the undersigned counsel emailed a request to Adam Bult and Maximillien Fetaz requesting a copy of their attorney client representation agreement with THC NV, including any joint representation type agreements with the other Plaintiff to which no response was provided. Thus, it is counsels understanding there is no such waiver of any potential conflicts that has been obtained.

1 *Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719, (1996) quoting *Ellis v. McDaniel*,
2 95 Nev. 455, 459, 596 P.2d 222, 224-25 (1979). THC NV and HERBAL CHOICE are
3 entitled to a preliminary injunction because, as provided above, irreparable harm will occur, there is
4 a reasonable likelihood of success on its merits, the potential hardships weigh in THC NV and
5 HERBAL CHOICE's favor and the public interest favors the injunction.
6

7 **1. THC NV and HERBAL CHOICE are Likely to Succeed on the Merits**

8
9 First and foremost, this Court has already found in its Facts and Conclusions of Law Granting
10 Preliminary Injunction Issued on August 23, 2019 the following pertinent issues:

11 (1) The State's determination that it was not reasonable to require industry to provide
12 every owner of a prospective licensee violated Article 19, Section 3 of the Nevada
13 Constitution. This determination was not based on a rational basis.

14
15 (2) The adoption of NAC 4533.255(1), as it applies to the application process is an
16 unconstitutional modification of BQ2.

17
18 (3) The failure of the State to carry out the mandatory provision of NRS 453D.200(6) is
19 fatal to the application process. The State's decision to adopt regulations in direct
20 violation of BQ2's mandatory application requirements is violative of Article 19, Section
21 2(3) of the Nevada Constitution.

22
23 (4) The State's late decision to delete the physical address requirement on some
24 application forms while not modifying those portions of the application that were
25 dependent on a physical location (i.e., floor plan, community impact, security plan, and
26 the sink locations) after the repeated communications by an applicant's agent; not
27 effectively communicating the revision; and, leaving the original version of the
28 application on the website, is evidence of conduct that is a serious issue.

1 (5) The State’s inclusion of the diversity category was implemented in a way that created
2 a process which was partial and subject to manipulation by applicants.

3 *Id.*

4 Further, THC NV and HERBAL CHOICE are likely to ultimately proceed on the underlying
5 merits of its action against the State on the following claims:

- 7 (1) Violation of Substantive Due Process against the Department;
- 8 (2) Violation of Procedural Due Process against the Department;
- 9 (3) Equal Protection Violation against the Department;
- 10 (4) Declaratory Judgment against all the Defendants;
- 11 (5) Petition for Judicial Review against all of the Defendants; and
- 12 (6) Petition for Writ of Mandamus against the Department

13
14 Given the number and extent of such claims at issue, for brevity’s sake, THC NV and HERBAL
15 CHOICE hereby incorporate by reference Plaintiffs’ July 14, 2020 Proposed Findings of Fact and
16 Conclusions of Law, on file herein to demonstrate that it is likely to prevail on the merits, which will
17 ultimate find that the recreational dispensary application process in its entirety was flawed.

18
19 This Court has heard over six (6) day of testimony which further confirm that the State had
20 designed and implemented a completely arbitrary and capricious application system (by doing such
21 things as not verifying any physical locations of applicants; by not verifying the accuracy or veracity
22 of resumes; by not requiring funds to be “unconditionally committed”; by not verifying the identity of
23 applicants (in particular when there was a trust and/or LLC at issue) among several other disturbing
24 flaws).

25
26 //

27
28

1 **2. There is a Reasonable Probability of Irreparable Harm to THC NV and HERBAL**
2 **CHOICE.**

3 There is a reasonable probability of irreparable harm for which compensatory damages would
4 be inadequate, as discussed above in Section III(A)(I) above, which THC NV incorporates by
5 reference into this section. *See Danberg Holdings*, 120 Nev. at 142-43 , 971 P .2d at 319-20 (**affirming**
6 **an injunction prohibiting Danberg Holdings from entering a settlement agreement with another**
7 **party because of “irreparable harm and inadequacy of legal remedies” to the plaintiff that would**
8 **result**) (emphasis added).
9

10 **3. The Relative Hardships Favor THC NV and HERBAL CHOICE**

11 Although the Court is not required to consider this factor, the relative hardships of the parties
12 also weigh in THC NV and HERBAL CHOICE’s favor. *See Clark Cty. Sch. Dist. v. Buchanan*, 12
13 Nev. at 1150, 924 P.2d at 719. There is no legitimate immediate need to approve the Partial Settlement
14 on this severely truncated timeline.
15

16 The only reason the settling parties are attempting to do so is to injury non settling Parties by
17 forcing them to accept a nuisance type settlement. Settling Plaintiffs ***and Defendants*** should not
18 benefit from such collusive and deviant behavior. It is clear by these Parties’ actions that there has
19 not been a scintilla of good faith in their negotiation process and said process has been riddled with
20 cunningly disingenuous attempts to in THC NV and HERBAL CHOICE from resolving this matter
21 on the merits.
22

23 As stated above, the Partial Settlement, which has not been provided to THC NV nor HERBAL
24 CHOICE, is believed to contain certain language that is specifically targeted to “take out” the
25 remaining parties and force them to dismiss their claims.
26

27 Instead of sanctioning such collusion, the parties should proceed to a hearing on a preliminary
28 injunction on this matter pursuant so that this Court can then decide if more permanent relief should

1 issue until this litigation is resolved, which will ultimately reconcile the recreational dispensary
2 application process on its merits. This Court should find that any negotiation which does not include
3 all Plaintiffs in a global type negotiation, is automatically implicit of bad faith.

4 An injunction, if granted, would preserve the status quo of the licenses at issue so that they
5 cannot be used as a sword against the remaining parties.

6
7 **4. If the Court Does Grant an Injunction the Bond, if Any, Should Be Nominal.**

8 NRCP 65(c) requires that security be given before a temporary restraining order and/or
9 preliminary injunction can issue. The sum of the security is left to the discretion of the court and is for
10 the payment of such costs and damages as may be incurred or suffered by any party found to be
11 wrongfully restrained or enjoined. *Id.* As an injunction in this matter would mean the status quo is
12 maintained and the Partial Settlement is held in abeyance until there is a final ruling on the merits of
13 the claims at issue. THC NV and HERBAL CHOICE already have posted Three Hundred Thousand
14 Dollars (\$300,00.00), respectively as a result of the August 23, 2019 Preliminary Injunction and has
15 substantial monies at risk. Therefore, any additional bond to simply the status should be minimal and
16 not be in excess \$500.00.

17
18
19 Both THC NV and HERBAL CHOICE simply want what is equitable, to be included in the
20 negotiations of a settlement. There should be no cost to secure such fairness in the legal process which
21 is **mandated** as to be included in a global resolution of this matter.

22 The fact that two Plaintiffs have been deliberately ignored, as if non-existent, in a proceeding
23 that they have spent the past two years, litigating, paying attorneys fees and complying with Court
24 Orders, not to mention a presence at trial, is a despicable demonstration of perpetuating the collusion
25 that this very trial is about, but now the betrayal is by Plaintiffs' own former counsel and Co-Plaintiffs.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.
CONCLUSION

For the foregoing reasons, the Court should find that Plaintiff THC NV and HERBAL CHOICE have met its burden for a temporary restraining order and ultimately a preliminary injunction in this matter must issue preventing any execution, enforcement and/or application any Partial Settlement until such time this matter is concluded herein, and enter a temporary restraining order in the form attached as Exhibit “2”.

DATED this 28th day of July 2020.

SIGAL CHATTAH, ESQ.

AMY L. SUGDEN, ESQ.

/s/ Sigal Chattah
Sigal Chattah
Nevada Bar No. 8264
5875 S. Rainbow Blvd #203
Las Vegas NV 89118
Attorney for Plaintiff
Herbal Choice, Inc.

/s/ Amy L. Sugden
Amy L. Sugden
Nevada Bar No 9983
9728 Giles pie Street
Las Vegas, NV 89183
Attorney for Plaintiff
THC Nevada LLC

1 AMY L. SUGDEN, ESQ.
2 Nev. Bar No. 9983
3 SUGDEN LAW
4 9728 Gilespe St.
5 Las Vegas, Nevada 89183
6 Telephone: (702) 307-1500
7 Facsimile: (702) 507-9011
8 amy@sugdenlaw.com
9 *Attorney for THC Nevada, LLC*

10 **DECLARATION OF AMY L. SUGDEN, ESQ. IN SUPPORT OF APPLICATION FOR**
11 **TEMPORARY RESTRAINING ORDER**

12 I, AMY L. SUGDEN, declare as follows:

- 13 1. I am a licensed attorney in the State of Nevada since 2005 and a member of
14 good standing with the State Bar of Nevada.
- 15 2. I am Counsel for Plaintiff THC Nevada, LLC, in the matter sub judice, and
16 substituted former Counsel of Brownstein Hyatt Farber Schreck on or about
17 June 24, 2020.
- 18 3. This Declaration is made in support of an Application for the Temporary
19 Restraining Order on an Order Shortening Time.
- 20 4. On or about July 17, 2020, I emailed THC NV's former counsel to request a
21 copy of the attorney client representation agreement with THC NV as well as
22 any other type of agreements related to joint representation of the ETW
23 Plaintiffs.
- 24 5. To date, I have no received any response.
- 25 6. Additionally, I have inquired of my client, THC NV, to determine if any
26 waiver of conflicts has been obtained by former counsel, to which my client is
27 unaware exists.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. As a result of disparate treatment between the Plaintiffs, it became clear that the less Plaintiffs in the ETW group, the easier to effectuate a settlement with Defendants in this matter, as the ultimate goal was a transfer of licenses in a resolution of all matters.
8. Accordingly, THC NV made an attempt was to be included in the participation of settlement negotiations which were immediately rejected.
9. Thereafter, it was brought to my attention that on July 15, a partial settlement agreement was being circulated including Planet 13; ETW Plaintiffs; Nevada Wellness Center, and Qualcan, LLC.
10. While it is clear that individual groups of Plaintiffs have no obligation to procure any resolution for all Plaintiffs, the deliberate collusion against the Plaintiffs that were never allowed to participate in the negotiations is a vile exhibition of corruption that not only plagues the case itself, but also the attempt to resolve it.
11. This Court has been privy to the continued entry and exit of numerous Plaintiffs' Counsels from the Courtroom during this trial, deceitfully and secretly attempting to negotiate terms in the hallway of the South Hall, while THC NV has not even been invited to even accept any offer.
12. It is not only Plaintiffs attempt to partially dispose of the Parties to this matter, it is also their intent to preclude and injure non settling Plaintiffs from litigating the matters on the merit, by forcing them to settle for nuisance value fees under the threat of attorneys fees and costs.

1 SIGAL CHATTAH, ESQ.
2 Nevada Bar No.: 8264
3 CHATTAH LAW GROUP
4 5875 S. Rainbow Blvd #203
5 Las Vegas, Nevada 89118
6 Tel: (702) 360-6200
7 Fax: (702) 643-6292
8 Chattahlaw@gmail.com
9 *Counsel for Plaintiffs*

10 **DECLARATION OF SIGAL CHATTAH, ESQ. IN SUPPORT OF APPLICATION**
11 **FOR TEMPORARY RESTRAINING ORDER**

12 I, SIGAL CHATTAH, declare as follows:

- 13 1. I am a licensed attorney in the State of Nevada since 2002 and a member of
14 good standing with the State Bar of Nevada.
- 15 2. I am Counsel for Plaintiff Herbal Choice, Inc. in the matter sub judice, and
16 substituted former Counsel of Brownstein Hyatt on or about May 20, 2020.
- 17 3. This Declaration is made in support of an Application for the Temporary
18 Restraining Order on an Order Shortening Time.
- 19 4. I was retained on this matter following a conflict that was relayed to Herbal
20 Choice and they were provided with the option of dismissing their claims with
21 return of their bond monies or finding new Counsel
- 22 5. Herbal Choice refused to dismiss their claims and chose to hire myself as
23 Counsel on this matter.
- 24 6. I was advised upon substitution, that at no time prior to representation of ETW
25 Plaintiffs or during the course of same, were HERBAL CHOICE presented
26 with a conflict waiver to be signed as part of a larger group of Plaintiffs
27 litigating and seeking the same ultimate result.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. As a result of disparate treatment between the Plaintiffs, it became clear that the less Plaintiffs in the ETW group, the easier to effectuate a settlement with Defendants in this matter, as the ultimate goal was a transfer of licenses in a resolution of all matters.

8. Accordingly, I made an attempt was to be included in the participation of settlement negotiations which were immediately rejected.

9. Thereafter, it was brought to my attention that on July 15, a partial settlement agreement was being circulated including Planet 13; ETW Plaintiffs; Nevada Wellness Center (“NWC”), and Qualcan, LLC.

10. While it is clear that individual groups of Plaintiffs have no obligation to procure any resolution for all Plaintiffs, the deliberate collusion against the Plaintiffs that were never allowed to participate in the negotiations is a vile exhibition of corruption that not only plagues the case itself, but also the attempt to resolve it.

11. This Court has been privy to the continued entry and exit of numerous Plaintiffs’ Counsels from the Courtroom during this trial, deceitfully and secretly attempting to negotiate terms in the hallway of the South Hall, while Herbal Choice has not even been invited to even accept any offer.

12. It is not only Plaintiffs attempt to partially dispose of the Parties to this matter, it is also their intent to preclude and injure non settling Plaintiffs from litigating the matters on the merit, by forcing them to settle for nuisance value fees under the threat of attorneys fees and costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. On July 31, 2020 at 2:00p.m., the Nevada Tax Commission will be conducting a hearing on its Consent Agenda on a partial settlement agreement that will not dispose of all matters of this case.

14. Further the Nevada Tax Commission must be advised that this Partial Settlement was not engaged in good faith, did not include all Plaintiffs, or was even remotely an attempt to globally resolve the matter.

15. It is clear that there was never an attempt to resolve the matter globally, and that the negotiations were targeted to deliberately and deceitfully exclude parties they deemed insignificant in the action.

16. These are the facts as I know them to be true.

17. Under NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

/s/ SIGAL CHATTAH
Declarant
SIGAL CHATTAH, ESQ.

EXHIBIT “1”

EXHIBIT “1”

NEVADA TAX COMMISSION MEETING
AGENDA

July 31, 2020
2:00 p.m.

In compliance with the Governor's Emergency Directive 006, dated March 22, 2020, this meeting will be conducted by means of electronic communication. The public may view the meeting by live stream on the Nevada Department of Taxation's YouTube channel at: <https://www.youtube.com/channel/UCwZMw0CLJAjXH1XFjYde18Q/feed> and may submit public comment as set forth below in the Public Comment section.

Note: Items on this agenda may be taken in a different order than listed. Items may be combined for consideration by the Tax Commission. Items may be pulled or removed from the agenda at any time.

- I. ****Public Comment.** Testimony will be accepted in writing or by telephone. In consideration of others, who may also wish to provide public comment, please avoid repetition, and limit your comments to no more than two (2) minutes. Please submit written testimony by email to tpadovano@tax.state.nv.us, by facsimile to (775) 684-2020; or by U.S. Mail addressed to the Nevada Tax Commission, 1550 E. College Parkway, Carson City, NV 89706. To dial in to provide testimony by telephone:
Dial: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592
When prompted to provide a Webinar ID, please enter: 973 8235 5536, then press #
When prompted for a Participant ID, please enter #
Please call (775) 684-2100 to report technical difficulties.

II. **CONSENT CALENDAR¹:**

A. Consideration for Approval of the Recommended Settlement Agreement:

- 1. In re Department of Taxation Litigation, Case No. A-19-787004-B, pending in the Eighth Judicial District Court (consolidated with Case Nos.: A-18-785818-W; A-18-786357-W; A-19-786962-B; A-19-787035-C; A-19-787540-W; A-19-787726-C; A-19-801416-B) (for possible action)**

- III. Next Meeting Date: August 17, 2020

- IV. ****Public Comment.** Testimony will be accepted in writing or by telephone. In consideration of others, who may also wish to provide public comment, please avoid repetition, and limit your comments to no more than two (2) minutes. Please submit written testimony by email to tpadovano@tax.state.nv.us, by facsimile to (775) 684-2020; or by U.S. Mail addressed to the Nevada Tax Commission, 1550 E. College Parkway, Carson City, NV 89706. To dial in to provide testimony by telephone:
Dial: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592
When prompted to provide a Webinar ID, please enter: 973 8235 5536, then press #
When prompted for a Participant ID, please enter #
Please call (775) 684-2100 to report technical difficulties.

¹ The Commission will review all of the items on the consent calendar unless a member of the Commission, the Attorney General's Office, the Department or the public wishes to speak in regard to a certain issue, in which case the Commission may, in its discretion, pull the item from the consent calendar.

V. Adjourn.

Please contact Tina Padovano at (775) 684-2096 to request copies of the Nevada Tax Commission support materials. Please call (775) 684-2100 to report technical difficulties.

Members of the public who are disabled and require accommodations or assistance at this meeting are requested to notify the Department of Taxation at (775) 684-2096 as soon as possible.

Any appeal to the Nevada Tax Commission (the "Commission") concerning the liability of tax must be heard in open session. A taxpayer may request that a portion of the hearing be closed to the public so that the Commission can receive proprietary or confidential information pursuant to NRS 360.247. The request must be submitted to the Commission in writing and contain a list or summary of the information that the taxpayer believes is proprietary or confidential. It must also include a short statement explaining how the information qualifies as proprietary or confidential information pursuant to NRS 360.247. The submission must be made no later than fourteen (14) days prior to the date of the hearing. *All requests for closed hearings will be noted as such on the Commission's agenda.

Decisions of the Tax Commission and any information submitted in public session will become public and may be published. If a transcript of any hearing held before the Commission is desired by the petitioner or appellant, he/she may obtain a copy, at the party's expense, from the court reporter furnished by the Commission.

**This item is to receive public comment on any issue and any discussion of those items, provided that comment will be limited to areas relevant to and within the authority of the Nevada Tax Commission. No action will be taken on any items raised in the public comment period. At the discretion of the Chairman, public comment may be received prior to action on individual agenda items. Public Comment may not be limited based on viewpoint. Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual the board may refuse to consider public comment. See NRS 233B.126.

Notice of this meeting has been posted on the internet through the Department of Taxation's website at <https://tax.nv.gov/> and at <https://notice.nv.gov/>.

EXHIBIT “2”

EXHIBIT “2”

1 AMY L. SUGDEN, ESQ.
Nev. Bar No. 9983
2 SUGDEN LAW
9728 Gilespe St.
3 Las Vegas, Nevada 89183
4 Telephone: (702) 307-1500
5 Facsimile: (702) 507-9011
amy@sugdenlaw.com
Attorney for THC Nevada, LLC

6 SIGAL CHATTAH, ESQ.
7 Nev. Bar No.: 8264
CHATTAH LAW GROUP
8 5875 S. Rainbow Blvd. #203
Las Vegas, Nevada 89118
9 Tel.: (702) 360-6200
Fax: (702) 643-6292
10 Chattahlaw@gmail.com
11 Attorney for Plaintiff
Herbal Choice, Inc.

12 EIGHTH JUDICIAL DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 *****

15 In Re: D.O.T. Litigation,) Case No.: A-19-787004-B
16) Dept. No: XI
17)
18) CONSOLIDATED WITH:
19) A-18-785818-W
20) A-18-786357-W
21) A-19-786962-B
22) A-19-787035-C
23) A-19-787540-W
24) A-19-787726-C
25) A-19-801416-B
26)
27)
28)

26 **TEMPORARY RESTRAINING ORDER**

1 Having considered Plaintiff's THC NEVADA, LLC ("THC NV") and HERBAL CHOICE,
2 INC. ("Herbal Choice")'s *Ex Parte* Application for Temporary Restraining Order ("Application");
3 having considered the exhibits attached to the Application, including the Declarations of Amy L.
4 Sugden, Esq. and Sigah Chattah, Esq., and all the other papers on file; and good cause having been
5 shown:

6 **IT IS HEREBY ORDERED** that THC NV and Herbal Choice's Application is **GRANTED**.

7 **IT IS FURTHER ORDERED** that any parties to the Partial Settlement that is currently set to
8 be considered at the July 31, 2020 Nevada Tax Commission Meeting, including the Department of
9 Taxation, are temporarily restrained from the execution, finalization and/or any attempts to perform
10 pursuant to the Partial Settlement Agreement in any way until such time as the hearing on the Motion
11 for Preliminary Injunction is heard.

12 **IT IS FURTHER ORDERED** that the hearing on THC NV and Herbal Choice's Motion for
13 Preliminary Injunction shall be conducted on _____, at _____ a.m./p.m.,
14 with notice to all parties as required by Nevada law.

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

1 IN SUPPORT OF THIS TEMPORARY RESTRAINING ORDER, and pursuant to NRCP
2 65(c), THC NV and Herbal Choice shall post a bond in the amount of \$_____.

3 **IT IS SO ORDERED.**

4 DATED: July , 2020.

5 TIME: _____:_____ .m.
6

7 _____

8 DISTRICT COURT JUDGE
9

10 Respectfully Submitted:

11 AMY L. SUGDEN
12

13 /s/ Amy L. Sugden

14 Amy L. Sugden
15 Nevada Bar No 9983
16 9728 Giles pie Street
17 Las Vegas, NV 89183

18 *Attorney for THC Nevada LLC*

19 SIGAL CHATTAH, ESQ.

20 /s/ Sigal Chattah

21 Nevada Bar No. 8264
22 5875 S. Rainbow Blvd #203
23 Las Vegas, NV 89118
24
25
26
27
28